

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

MARIO RAMOS HINOJOS)

Full name and prison number (if any) of Applicant)
301870)

v.)

County of Greenville)
State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2012-CP-23- 07208

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee C/E 990 WISACKY HWY Bishopville
SC 29010
2. Name and location of Court which imposed sentence Greenville County
Court of General Session
3. Name(s) of co-defendant(s) (if any) Robert Joel Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-65-23-2931
 - (b) 2003 65-23-2944

(c) 2003-GS-23-2977

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 12 2004 Murder life

(b) May 12 2004 Murder life

(c) May 12 2004 Assault Battery w/intent 20 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(☒) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Supreme Court

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. April 17 2007

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NA

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NA

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) United States Constitutional rights violation
- (b) SC Constitutional Rights violation
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective Assistance, Prosecutorial mis conduct see Attachment
- (b) Ineffective Assistance, Prosecutorial misconduct see Attachment
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or

application:

- (a) the specific nature thereof:

- i. Filed PCR
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. Greenville County Court House of General sessions
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Denied Barred by statute of limitations

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 18th 2011

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. PCR Denied Barred by statute of limitations

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Newly discovered Evidence
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
(b) your trial, if any? yes
(c) your sentencing? yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. Thomas J. Quinn 600 E Washington St, Suite 620
Greenville, SC 29601
ii. Robert M. Dudek Po Box 11589, Columbia SC
29211-1589
iii. _____

- (b) the proceedings at which each such attorney represented you:

i. (b) (c)
ii. (d)
iii. _____

19. State clearly the relief you seek in filing this application:

My conviction vacated, or reversed and
remanded. I seek a trial Attorney to handle
my PCR And/or an Austin review

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Mario Ramos Hingos JR, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mario Hingos

SWORN to and subscribed before me this 22
day of Oct 2012.

Debra Sires (L.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Mario Hinojos JR, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Mario Hinojos
Applicant

SWORN or affirmed to and subscribed before me this

22 day of Oct, 2012.

[Signature]
Notary Public

My Commission Expires: 11-4-2015

11. (a) Errant jury Instructions, subject matter jurisdiction, Miscarriage of justice and First P.C.R. judge erred and any Amendments made by appointed Counsel.

(b) Errant jury Instructions, subject matter jurisdiction, Miscarriage of justice, First P.C.R. judge erred and any Amendments made by appointed Counsel.

Varrio Hingos 301870

ee C/E smu-S-184

'90 wisacky Hwy

3ishopville SC

29010

2012-CP-23-07208

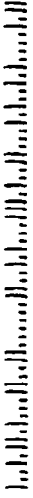
SC 290

OCT 2012
PM 2 1



Paul B Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, SC 29601

29601219099



State of South Carolina
County of Greenville

Mario Ramos Hingos 301870
Applicant

V.

County of Greenville
State of South Carolina
Respondent

In the Court of Common Pleas

Motion for Discovery

Case # 2012-CP-23 07208

(Indictment numbers)	Arrest - Warrant
2003-GS-23-2931	H-149199
2003-GS-23-2944	H-149199
2003-GS-23-2977	H-149200

2012 DEC - 1

PG 2 of 26

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKSHIRE

Applicant, Mario R. Hingos, hereby moves pursuant to S.C. Code Ann. § 17-27-150, for leave to conduct discovery in this Post-conviction Relief action. In support of this motion, Applicant apprises the Court of the following findings of facts and legal principles:

1. Applicant is presently serving a life sentence for murder, murder and A.B.W.I.K.. Said sentence was imposed on ~~September~~ May 12th 2004 by the Greenville County Court of General Sessions following a plea of not guilty.

2. S.C. Code Annotated § 17-27-150 specifically authorizes discovery in non-capital Post-conviction Relief proceedings upon a showing of good cause. A party in a non-capital P.C.R. proceeding shall be entitled to invoke the process of discovery available under the South Carolina Rules of Civil Procedures.

3. Applicant submits that good cause exists for the authorization of discovery in this matter as follows:

A) Use of Discovery materials will expedite preparation for the evidentiary hearing, therefore, saving time, as well as state resources.

B) Permitting Discovery will substantially reduce the likelihood that a last minute continuance of the Post-Conviction Relief proceeding in this matter will be necessary.

C) Discovery will permit Applicant to obtain necessary information through means other than Court proceedings such as depositions, affidavits, and documents produced by the prosecuting agencies. Therefore, valuable Court time can be used to present only relevant material and witnesses obtained through these sources.

D) If discovery is not authorized, Applicant will have no option but to pursue the information and materials he seeks to discover by subpoenaing individuals and files to be produced at the P.C.R. hearing. It bears emphasis that Applicant does not intend to seek discovery of any materials or information to which he could not gain access by compelling the appearance of witnesses or records custodians at the P.C.R. hearing. Rather, Applicant seeks to invoke discovery simply as a means of obtaining and reviewing that information before Court convenes a hearing on the merits of Applicant's grounds for relief. By doing so, Applicant will be able to separate the relevant from the irrelevant, conduct any necessary follow-up to said information, be sure any Brady claims are true and factual and streamline his factual presentation without expending the scarce judicial resources and time that would be consumed if Applicant were forced to wait until the

11-25-12

P.3 of 3

evidentiary hearing before being permitted access to the information sought by Applicant such as: Police reports or the non-existence thereof. If forced to rely on the latter method, Applicant will almost certainly require additional time for investigation after gaining access to said information. This will, in turn, require a continuance of the PCR proceedings, rather than allowing all of the facts supporting Applicant's claims for relief to be presented at a single evidentiary hearing.

Wherefore, for all reasons as set forth more fully above, Applicant submits that he has presented good cause for the invocation of discovery in this matter, and therefore, respectfully request, pursuant to § 17-27-150, that this Honorable Court authorize Applicant to conduct discovery as prescribed by the South Carolina Rules of Civil Procedure.

Respectfully Submitted,

Mario Hinojos

Mario R. Hinojos Jr

Date: November 23th 2012

(11-15-12)
SCDC Staff Refused to
Notarize Motion

Sworn to before me this

_____ Day of _____, 2012

Notary Public of South Carolina

My Commission expires: _____

Certificate of Service

I, Mario Hingos, do hereby certify that I have sent the foregoing letter dated December 9, 2013, by personally depositing same in the institutional mail box address to the person indicated below this 9th day of December 9, 2013:

Honorable Paul B. Wickensmer
Greenville County Clerk of Court
305 East North St.
Greenville, S.C. 29601

Mario Hingos

Mario Hingos 301870
Lee Co SMU-N-99
990 Wsacky Hwy.
Bishopville, S.C.
29010

Bishopville
South Carolina
Dec. 9, 2013



**Department of Public Safety
Records Management Services Division**

**Jinny Moran, Captain
County Records Manager
jmoran@greenvillecounty.org
(864) 467-5211
www.greenvillecounty.org**

November 16, 2012

Mario Hinojos #301870
Lee C/I SMU-S-184
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Hinojos,

You will need to write the Greenville County Sheriff's Office to request this report under the Freedom of Information Act. I have listed below the address for you to send the request to:

Lt. Michael Hildebrand
Greenville County Sheriff's Office
4 Mc Gee Street
Greenville, SC 29601

Sincerely,

A. Farrell
Records Supervisor

cc: Captain Moran



Sheriff

Steve Loftis
Greenville County Sheriff's Office

December 10, 2012

Mr. Mario Hinojos Jr. 301870
Lee Correctional Institution SMU-S-184
990 Whiskey Hwy.
Bishopville, SC 29010

Re: Freedom of Information Act Request
Greenville County Case No. #01-2002-099003

Dear Sir:

Your Freedom of Information Act request dated November 27, 2012 was received by the Greenville County Sheriff's Office on December 3, 2012 and forwarded to me for follow-up and reply.

The records of state and local governments and agencies in South Carolina are governed by the South Carolina Freedom of Information Act (1998 Act No. 423, Section 1; also referred to as FOIA) from which the following statute is taken:

SECTION 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public



An Accredited Law Enforcement Agency

4 McGee Street, Greenville, SC 29601 / (864) 467-5280 / Fax (864) 467-5299 Email: sloftis@greenvillecounty.org

records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.(sic.)

The FOIA permits certain exemptions from the records. Information of a personal nature that could be seen as an unreasonable invasion of privacy or that may endanger a person will be redacted in accordance with §30-4-40(2) & (3).

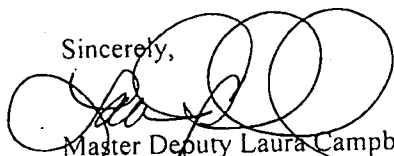
Photographs are not maintained as a part of a case file, and are maintained by the Greenville County Department of Public Safety Forensic Division. These photographs may be exempt under § 30-4-40 (18). Please direct any FOIA request in regard to photographs to that agency.

Additionally, the evidence in this case is not public record as defined by §§ 30-4- 30(d) and 30-4-50 (a-b). Therefore, the evidence in this case which is sealed and in storage, will not be made available.

As a public body as defined by the Act and in accordance with § 30-4-30 (b), a reasonable fee will be charged for making the records available. The fee for the research and preparation of records is \$20.00 per hour, 10 cents per page, and/or \$2.00 for each CD. In fulfillment of your request, the fee is \$132.30. The requested record, subject to the abovementioned exemptions, will be sent to you as soon as payment of the fee is received in check or money order.

As provided under the Freedom of Information Act; this response is not offered as a sworn affidavit, is non-testimonial, is not a tacit admission of any other perceived fact, and not subject to a penalty for perjury. This response to your request is in no way or form intended, nor can this be construed as anything other than a determination and notice as to the availability of the requested public records as required by the FOIA.

Sincerely,



Master Deputy Laura Campbell
Public Information Officer
Greenville County Sheriff's Office (SC)

Greenville County Sheriff's Office
Administrative Services Division

FOIA Invoice

To: Mr. Mario Hinojos Jr. 301870
Lee Correctional Institution SMU-S-184
990 Whiskey Hwy.
Bishopville, SC 29010

123 – Copied pages of record	\$12.30
6.0 – Research hours	\$120.00
Total Due:	\$123.30

Please promptly remit payment (via check or money order) to:

Greenville County Sheriff's Office
Attn: M.D. Laura Campbell
4 McGee Street
Greenville, SC 29601

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

December 17, 2012

Mr. Mario Hinojos, #301820
Lee C.I., SMU-S-184
990 Wisacky Highway
Bishopville, SC 29010

RE: Freedom of Information Act Request #2012-0700

Dear Mr. Hinojos:

The above referenced file concerning your case has been copied and reviewed. Please find listed below a breakdown of the charges associated with your request.

21 pages @ \$0.30 each	-	\$ 6.30
One Hour Research & Copying Time	-	<u>20.00</u>
TOTAL	-	\$26.30

All fees need to be paid by check or money order and made payable to the State Law Enforcement Division. Address the envelope to **SLED FOIA Processing, P.O. Box 21398, Columbia, SC 29221-1398**. Please include the request number **2012-0700**. Upon receipt of payment, the file will be forwarded to you.

Sincerely,

Agent Thomas Berry
Freedom of Information Coordinator

FOI#2012-0700



P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

November 30, 2012

MARIO RAMOS HINOJOS, JR
**301870
LEE CORRECTIONAL INSTITUTE
SMU-S-184
990 WISACKY HIGHWAY
BISHOPVILLE, SC 29010

FOIPA Request No.: 1199360-000
Subject: HINOJOS, MARIO RAMOS, JR

Dear Mr. Hinojos:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- ☒ Your request has been received at FBI Headquarters for processing.
- ☐ Your request has been received at the [_____] Resident Agency / [_____] Field Office] and forwarded to FBI Headquarters for processing.
- ☒ We are searching the indices to our Central Records System for the information responsive to this request. You will be informed of the results in future correspondence.
- ☐ Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- ☒ Please check for the status of your FOIPA request at www.fbi.gov/foia.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Pg. 1 of 4

Mario R. Hinojos 301870
Applicant,
V.

State of South Carolina
Respondent,

In The Court of Common Pleas

Motion To Amend
Application For
Post-Conviction Relief

CA. No. 2012-CP-23-07808

2013 FEB 17 10:32

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

Applicant would like to move the Court to make the following amendments to his PCR Application filed Nov. 14th.

Questions and Amendments.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Due Process, Ineffective Assistance of Trial Counsel, Prosecutorial Misconduct, Ineffective Assistance of Appellate Counsel, Errant Jury Instructions, Illegal search and seizures, Subject matter jurisdiction, Miranda Violation, Brady violation, Miscarriage of justice and First PCR Judge erred/any amendments made by appointed Counsel.

(b) Due Process, Ineffective Assistance of Trial Counsel, Prosecutorial Misconduct, Ineffective Assistance of Appellate Counsel, Errant Jury Instructions, Illegal search and seizure,

1-B-2013

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Subject Matter Jurisdiction, Miranda violation, Brady violation, Miscarriage of Justice, and First PCR judge erred/any amendments made by appointed Counsel.

Question and Amendment.

15. If you answered "yes" to (14) identify:

(a) Which grounds have been presented:

i. Ineffective assistance of trial counsel:

- (a) Failed to conduct proper pre-trial investigation.
- (b) Failed to challenge the voluntariness of the Applicant's statement at the Jackson v. Denno hearing.
- (c) Failed to object to malice charge.
- (d) Attempted to persuade the Applicant to lie on the stand.

ii. Illegal search and seizure:

- (a) Lack of Probable Cause

iii. Ineffective assistance of appellate counsel:

- (a) Failed to explain PCR.

Question and amendment

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground

1-13-2013

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and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Trial Counsel.

- i. Counsel failed to motion to quash indictment. Lack of adequate access to the law library.
- ii. Counsel failed to motion for a mental and psychiatric evaluation/ competency hearing. Lack of adequate access to the law library.
- iii. Counsel refused to allow Applicant to assist in his own defense by refusing to allow Applicant access to his motion of discovery. Lack of adequate access to the law library.
- iv. Counsel failed to object to prosecutor's closing argument where some parts were based off his opinion and not the facts of the case, some parts appealed to the passion and prejudice of jury and other parts gave a misconception of the law that created a burden-shifting presumption. Lack of adequate access to the law library.

(b) Prosecutorial Misconduct.

- i. The prosecutor made several inflammatory and prejudicial remarks in his closing argument. Lack of adequate access to the law library.
- ii. The prosecutor withheld impeaching and exculpatory evidence material to Applicant's guilt or innocence. Lack of adequate access to the law library. Newly discovered Evidence.

(c) Subject Matter Jurisdiction.

- i. Applicant claims the court lacked subject matter jurisdiction.

1-13-2013

Pg. 4 of 4

to trial his on the grounds the indictment was secured with evidence that was fraudulent and "fruit of a poisonous tree," also the fact that the sole witness who went before the grand jury was the lead investigator Paul Silvaggio who also presented fraudulent evidence to the magistrate to secure an arrest warrant therefore the indictments themselves would also be fraudulent. Lack of access to an adequate law library.

(d) Miscarriage of justice.

i. Applicant claims to be "Actually Innocence" of murder and for the Court not to hear his claims would constitute of a complete Miscarriage of justice. Lack of an adequate law library and access to thereof.

(e) First PCR judge erred.

i. Applicant claims the PCR judge in his original application erred by not appointing counsel, not making specific findings of fact and state expressly its conclusions of law relating to each issue presented as stated in §17-27-80 also the disposition on the pleading and record is not proper if there exists a material issue of fact. Could not have been raised because it did not exist at the time.

Hereby Applicant request the aforementioned questions to be amended on his Application for Post-Conviction Relief filed in this Court.

Jan. 13th 2013

Respectfully submitted
Mario Hinojos

Honorable Daniel E. Shearouse,
Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

Dec. 9, 2013.

RECEIVED

DEC 16 2013

Re: *Hingos v. State*, 2012-CP-23-08208 SUPREME COURT

Dear Mr. Shearouse,

I am the Applicant in the above-captioned matter.

On November 14, 2012, Applicant Ple. Per Post-Conviction Relief. upon the State's failure to make any response or pleading, Applicant filed for ~~and~~ default on April 5, 2013, entitled Motion For Judgment By Default.

Twice Applicant has asked the Greenville County Clerk of Court to please return a copy of said motion. Applicant has sought help from this Honorable Court once before who then forwarded the request to the lower court.

Once again I am asking this Court to please help me obtain a copy of my Motion For Judgment By Default, from the Greenville County Clerk of Court.

In this motion, and pursuant to Rule 55(e), it listed all grounds for relief along with a full brief of the issues. A copy of which was sent to the Attorney General's Office with Affidavit of service.

A default hearing was held on June 20, 2013 in front of the Honorable D. Harrison Hill, where it was determined by him I was entitled to Counsel.

This same brief was then turned over to Counsel by me and Counsel has somehow lost it. Even after I asked him to make a copy of it he refused to do so and claims to have sent it to me yet I swear before God himself Counsel has not returned my brief to me.

It cost me a lot of time and ~~and~~ research to put that brief together. It issue had merit and warranted reversal mandated by both the Supreme Court of South Carolina as well as the Supreme Court of the United States.

Please look into this matter for me.

Respectfully
Mario Hingos

Mario Hingos
Lee 1/2 SMO-N-99
990 Worsack Hwy.
Bishopville SC
29010

Dec. 9, 2013.

Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 East North St.
Greenville, S.C. 29601

RECEIVED

DEC 16 2013

Re: Hinojos v. State, 2012-CP-23-07208
S.C. SUPREME COURT

Dear Mr. Wickensimer,

I am the Applicant in the above captioned matter. On April 5, 2013, Applicant filed with this Honorable Court a Motion For Judgment By Default.

The Applicant has requested a copy of this motion twice and has not received a response. The Applicant would request once again for a copy of the Motion For Judgment By Default filed with this Court April 5, 2013.

Respectfully,
Mario Hinojos

Mario Hinojos 301870
Lee/I Smu-N-99
990 W. Sack Hwy
Bishopville, SC 29010

Judge - Puk action filed
Feb 2013, no response
from state(yet). Inmate
has now filed a motion
for Default - how do you
want to handle? - P.

Set for hrg -
notify AG
hearing date 7
Thank U

CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

2013 APR 25 P 3:05



Judge,

It looks like I
got the Amended
motion before
the original so
I marked out the
Clock and attached
it to the amended.

A handwritten signature, possibly "J. J.", written in black ink.

1-800-THE KNIGHTS
1-800-843-5644

April 5, 2013

Honorable Paul B. Wickensimer,
Greenville County Clerk of Court
305 East North Street
Greenville, South Carolina 29601

RE: State of South Carolina, Respondent,
v. Mario Ramos Hingos JR 301870,
Applicant, Case No. 2012-CF-23-07208.

Dear Mr. Wickensimer:

Enclosed for filing is a notice and Motion for
Judgment By Default in the above case. Also enclosed
are the following:

- (1) Proof of service of motion on the respondent.
- (2) A copy of the Motion for Judgment By Default.

Also I would like for you to please take note. Due to shortage
on paper pages 24 - 27 are front and back. I ask the Court
to please excuse this.

Respectfully
Mario Hingos
Mario Hingos 301870
Lee & I smu 5 184
990 Wiscoky Hwy
Bishopville SC 29010

State of South Carolina
County of Greenville

In The Court of Common Pleas

C.A. No. 2012-CP-23-07208

Mario Ramos Hinojos dR
S.C.D.C. No. 301870

Applicant,

v.

State of South Carolina
Respondent,

Motion For
Judgment by
Default

2013 APR 22 P 2:22 PM

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 14th 2012 by a pro se indigent litigant.

I

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the April 23rd 2003 Term of Greenville County Grand Jury for two (2) counts of Murder (2003-AS-23-2931, 2944) and one (1) count of assault and battery with intent to kill (ABIK) (2003-AS-23-2977). He was represented by Thomas J. Quinn, Esquire.

The Applicant was found guilty after a jury trial. On May 12th 2004, the Honorable Harry R. Patterson sentenced Applicant to concurrent terms of life imprisonment for each count of Murder and twenty (20) years for ABik.

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A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals, where Robert M. Dudek, Esquire of the S.C. Office of Appellate Defense submitted the appeal in the form of an Anders brief. The Court of Appeals dismissed the appeal. State v. Hinojos, op. No. 2007-up-176 (S.C. Ct. App. filed April 17th 2007).

Applicant then filed a PCR Application on April 15th 2011. The Application was dismissed on October 11th 2011. This Application followed.

II

Applicant submits the state has failed to comply with the statutory provisions of Rule 12(a) SCRPC, to make a timely Return, and therefore, has default and waived their right to assert an affirmative defense. Also the State is in violation of due process, SC Const. Art I § 3 and the Fourteenth Amendment of the United States Constitution, by not promptly appointing counsel and moving the Court for an evidentiary hearing to determine the merits of Applicant's Claims.

Rule 12(a) SCRPC provides in pertinent part:

..." provided further that the state of South Carolina shall answer or otherwise respond to an application for post-conviction relief within ... 90 days if it arises out of a trial."

Applicant mailed the Application for Post-Conviction Relief Postmarked Oct 24, 2012. The Application was filed by the

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Honorable Paul B. Wickensimer on November 14 2012. It is now April 5, 2013 which clearly has exceeded the 90 days per Rule 12(a) and the additional five(5) days pursuant to Rule 6(e) SCRPC.

The supreme court of south Carolina has held that, Rules of Procedure, like statutes, should be given their plain meaning, and when text of rule is clear and unambiguous, judicial inquiry is complete. see e.g. Whitehead v. State, 426 S.E. 2d 315. It is clear that Rule 12(a) and 6(e) SCRPC provided the State with 95 days to make a Return which the State has failed to timely do so, therefore, Applicant asserts he is entitled to judgment by default pursuant to Rules 55(b)(2) and 54(c) SCRPC, unless the State can provide good cause.

Furthermore, by the states failure to make a Return the court must assume that the state consents ~~to~~ the allegations therein the Application.

Allegations made in a complaint that are not denied in the answer are deemed admitted. Motors Ins. Corp. v. State By and Through Dept. of Highways and Public Transp. (SC App. 1993) 313 S.C. 279, 437 S.E. 2d 555, rehearing denied, Certiorari denied.

III

Applicant asserts pursuant to Rule 55(c) SCRCP, that he cannot receive judgment by default against the State unless he establishes his claims to relief by evidence ~~of~~ satisfactory to the Court.

IV

Grounds For Relief

1) Ineffective Assistance of Trial Counsel

(a) Counsel failed to investigate validity of Applicant's arrest warrant and failed to motion to suppress evidence and an incriminating confession that was the fruit of an illegal seizure. Warrants lacked probable cause, contained information that was false and misleading and were insufficient to allow the issuing officer to come to his own independent decision.

Facts and Conclusion of Law

Alleged crime was said to have taken place on June 25, 2002. The arrest warrants were also issued on the same day of June 25, 2002. The affidavit for said arrest warrants stated that:

"Affiant is an investigator with the Greenville County Sheriff's Office Homicide Unit and states that on the above date the above defendant along with Co-defendant, Robert Joel Smith did

willfully and knowingly with malice aforethought did shoot and kill Keryatta G. Campbell while at 160 Woodside Road, within Greenville County. Affiant has statements along with law enforcement seizure of evidence which implicates the above defendants in this case. This case is filed with the Greenville County Sheriff's office under Case # 02-99003.

How is it, within less than 12 hours affiant could swear under oath that "defendants... did willfully and knowingly with malice aforethought, did shoot and kill" said victim?

It is highly unlikely that investigator/affiant could come to such a determination without first conducting a full investigation and first speaking with the above victim of the assault and battery or a suspect.

Affidavit for Assault and Battery with Intent to Kill states; "Affiant is an investigator with the Greenville County Sheriff's office Homicide unit and states that on the above date, the above defendant along with Co-defendant, Robert Joel Smith, did willfully and knowingly with malice aforethought, did shoot w/intent to kill, Jason Carver, while at 160 Woodside Road, within Greenville County. Affiant has statements along with law enforcement seizure of evidence which implicates the above defendants in this case. The above victim is receiving emergency medical treatment for a gun shot wound to the head."

The victim, Jason Carver, was never asked to submit a written statement by the state and testified as followed;

Q) Mr. Carver did you give a statement to the police about this case?

A) No sir, because at the time the detective asked me, I was just getting out of surgery and I was on medication.

Q) And they didn't ever have you come back to give them a statement.

A) No sir.

Q) What about the solicitor's office? Have you met with Mr. Steinberg before?

A) Once or twice.

Q) And did he ask you to write out a statement or give any statement.

A) No sir.

See Transcript pg. 124 lines 1-14

Investigator Paul Silvaggio swore under oath to have in his possession and presented "statements and evidence" that "implicates defendant in a crime," to the magistrate for issuance of a warrant. Although the witness never submitted any statement because he was spoken to till after surgery, which that being the reason he never gave a statement because he was under heavy medication. The investigator testified to this also, stating that "the witness was under medical care and when an individual is under medical care and subsequent to that on medication, altering-type medication for pain, nerves, such as that nature, its improper and unethical for a law enforcement officer to take a statement from an individual under those conditions." See Transcript pg. 369 lines 19-24.

This corroborates with the testimony of Jason Carter, that, he, the witness, was never questioned until after surgery rendering him under heavy mind altering medication, possibly leaving him incoherent and possibly unreliable.

In the investigator's affidavit he states that the "witness is" receiving emergency medical treatment", implying to the magistrate that he spoke to the witness before surgery and not after, even though he testified differently.

"The statutory requirement that an affidavit on information and belief must set forth the sources of affiant's information is to the end that the magistrate may judicially weigh not only the information, but the source thereof, in determining whether or not there is probable cause for the issuance of the warrant." State v. York, 250 S.C. 30, 156 S.E. 2d 326.

The sole source mentioned in the affidavit was only the victim/witness and both the witness and affiant testified to not have spoken until after victim was released from surgery and therefore the statement did not and could not have come from the victim/witness mentioned in the affidavit. Furthermore the information in the affidavit was fraudulent, for the affiant has claimed the witness was receiving emergency treatment at the time he ~~secured~~ secured the warrant yet he never spoke to the witness till after he was released from surgery.

All other statements gathered before issuance of the warrant were based solely upon hearsay within hearsay. That one person had heard from one person that another person told them. Information of this kind is no more than a mere rumor and does not grant

probable cause absent support from affiant that the informant was credible and reliable.

"In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." Jabon v. U.S., 381 U.S. 214, 85 S.Ct. 1365, 14 L.Ed. 2d 345 (1965).

"The constitutional requirement of probable cause can be satisfied by hearsay information; however affidavit for warrant must set forth underlying circumstances necessary to enable magistrate's independently to judge on validity of informant's conclusion and affiant-officers must attempt to support their claim that their informant was credible or his information reliable." Jabon v. U.S., *Supra*; State v. York, *Supra*; State v. Hill, 245 S.C. 76, 138 S.E. 2d 829 (1964). "Moreover a simple assertion of police suspicion is not itself a sufficient basis for a magistrate's finding of probable cause, we do not believe it may be used to give additional weight to allegations that would otherwise be insufficient." Jabon v. U.S., *Supra*.

It is clear the investigator failed to list any finding of fact, in his affidavit, which would allow a magistrate to come to his own independent decision of whether to issue the warrant. In fact the affidavit appears to be based on affiant's suspicion and mere speculation. How else would it be that he came to the conclusion that it was done "willfully ~~and~~ and knowingly with malice afore-

thought "without first speaking to one of the suspects, an eye witness or the actual victim?"

"Where affidavit does not disclose anything which the issuing officer can consider in arriving at a determination of whether there is probable cause for the issuance of a warrant, this, in effect, leaves the determination of probable cause to the judgement and discretion of the police officer rather than to the issuing officer; therefore, the affidavit is totally insufficient and a warrant issued thereupon is a nullity." State v. Hill, Supra, State v. York, Supra.

The principal issue involved on this Application is the contention of the Applicant that the arrest warrant was issued in violation of Art. I, Section 16 of the Constitution of South Carolina as well as the Fourth Amendment to the Constitution of the United States with the results that the Arrest warrant was a nullity, and therefore the conviction should be reversed on authority of the decision of the United States Supreme Court in the Case of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L. Ed. 2d 1081, 84 A.L.R. 2d 933. The decision in the Mapp case for the first time imposed upon the states the rule long in effect in the Federal Courts that evidence obtained as the result of a unlawful search and seizure must be excluded. See State v. Morris, 243 S.C. 225, 133 S.E. 2d 744.

Counselor was therefore ineffective for not investigating validity of Applicant's arrest warrant and motioning to suppress evidence. Applicant was prejudice by the admission of an incriminating confession that turned out to be the sol evidence granted the jury in their deliberation and without it there is a great probability

Applicant would have been acquitted of murder.

(b) Counsel failed to motion to quash indictment on grounds that investigator, which is officer of the state and same investigator who admitted fraudulent affidavit to the magistrate, was the sole witness that went before the Grand Jury for issuance of an indictment.

Facts and Conclusion of law.

In State v. Capps, 276 S.C. 59, 275 S.E. 2d 872 (1981), a majority of this Court strongly disapproved of the practice of a solicitor appearing as the sole witness before a grand jury unless "no other alternative was available". (emphasis added), but did not prohibit the practice. This Court has stated that "the practice of using a solicitor or other officer of the state as the sole witness before the grand jury to provide only a summary of the evidence could be abused and we strongly suggest it be abandoned unless no alternative is available." State v. Capps, supra.

In State v. Dawkins, 297 S.C. 386, 377 S.E. 2d 298 (1984), the holding in Capps was reiterated and prosecutors were again cautioned to avoid the practice of appearing as the sole witness before the grand jury.

Finally, in State v. Anderson, 439 S.E. 2d 835 (SC 1993), this Court found that, "because of the uncertainty and confusion that is taking place at all levels of the judiciary regarding this issue, we take this opportunity to explicitly prohibit the practice of prosecutors appearing as the sole witness before the grand jury..."

In the present case Applicant contends that the sole witness

listed on his three indictments, is Paul Silvaggio, an officer of the state, who also was the same investigator who swore under oath on an affidavit that was fraudulent, he himself, gave to a magistrate for issuance of an arrest warrant.

Counsel therefore, was deficient for failure to motion to quash indictment and prejudice is shown through a conviction by an indictment that very well possibly could have been issued with the use of false information. And there is a possibility the state had no other witness and had Counselor quashed indictment the state could not have reindicted Applicant, for lack of witness, and therefore no conviction.

(C) Counsel failed to motion for a mental and psychiatric evaluation / competency hearing.

Fact and Conclusion of Law

Due Process prohibits the conviction of a person who is mentally incompetent. Bishop v. United States, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed. 835 (1956)

Applicant contends that Counsel knew, or should have known through the ~~exercise~~ exercise of due diligence, that Applicant had mental deficiencies, a diminished capacity, was in special education classes since he was 7, has a history of mental health as a kid, expressed suicide during the police interrogation, attempted suicide after the interrogation and was administered psychotropic and anti-depressant medications by Greenville County throughout his trial.

Applicant contends that he only spoke to his trial Attorney twice throughout his trial and his mental state rendered him with the inability to efficiently assist in his own defense. "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational understanding as well as factual understanding of the proceedings against him," *Carnes v. State*, 275 S.C. 353, 271 S.E. 2d 121 (1980).

Applicant contends that the two times Counsel visited him was only for brief moments lasting no longer than twenty to thirty minutes. It is highly unlikely that Counsel could determine in such a brief time span of whether Applicant had ~~and~~ any mental deficiencies.

Applicant also contends that he cannot present any probative evidence without the assistance of Counsel to acquire all the necessary paper work to prove these allegation. Applicant has already attempted to retrieve mental health records from Cobb County Georgia and Greenville County South Carolina Detention center whom refuse to respond. Applicant has no other help or assistance on the outside of these prison walls.

(d) Counsel fell below professional norms by failing to Allow Applicant to assist in his own defence when Counsel refused to provide Applicant with a copy of his motion of discovery. Applicant had to get his mother to send him a copy through the mail. Before Applicant could fully review the discovery Applicant's Mother and Counsel were both telling him to return the discovery.

Applicant not understanding the proceedings and under medication was persuaded by Counsel and complied with his mother's wishes and sent it back. Applicant was therefore denied the opportunity to investigate and present a defense.

Applicant claims this creates a per se ineffective assistance claim under United States v. Cronk, 466 U.S. 648, 104 S.Ct. 2039 80 L.Ed.2d 657.

(e) Counsel failed to investigate and present witnesses and other evidence that would rebut the voluntariness of Applicant's confession at the Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 hearing. Applicant ~~also~~ claims the incriminating confession was obtained in ~~violation~~ violation of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602.

Facts and Conclusion of Law

On June 30th 2002 defendant was arrested by the FBI in Cobb County Georgia upon the request of Greenville County South Carolina investigators. The arrest took place around 10:30 Am. The Applicant was never told why he was arrested, was told his Miranda rights and interrogated by an F.B.I. Agent on the way to Cobb County. Applicant ~~also~~ then invoked his rights and then told the Agent he does not want to talk about it and that he would like to speak with his mother so she could get him a lawyer. The Agent said that was fine and that he would still have to speak with Greenville County.

Applicant claims to have remained silent and later booked-in

at Cobb County Detention Center where he was asked if he would like to speak to Greenville County. Applicant claims to have state that he does not know for what and that he would like to call his mother. The officer stated that "he could call his mother when Greenville County gets here." The officer then order defendant to be placed in a holding cell where he was to remain until Greenville County would let him use the phone, even after defendant stated he does not want to speak to Greenville County.

After eight (8) hours of having to remain in the holding cell and being forced to sleep on a cold concrete bench Applicant was then awakened by two (2) officers who stated Greenville is ready to see you. Applicant claims to have told them that he only wants to call his mother and had refused to go with the officers. The officers left and returned 10 minutes later and told him that they would take him to call his mom.

Applicant was then taken to a small room where three (3) investigators were, two from Greenville County and one (1) from Cobb County. Paul silvaggio then asked if Applicant would like to call his family. He stated he like to call his mom but Paul dialed the number of his uncle instead.

Applicant claims that his uncle told him that Greenville locked his dad up for the murder charges and that they were going to give him life, and that if he told them what happen they will let his dad go. Applicant claims to have stated crying and stated that he would like to talk about what had happened so that his dad did not go to prison.

Investigator Paul silvaggio stated that he would type the statement that that is how it is done they always type them. So Applicant was read his miranda rights and then the confession was being given.

In the begining of the confession the Applicant was told by Paul silvaggio that he could face anywhere from zero time in prison to the death penalty. Applicant then started crying again stated that he was sorry and that it was not their fault. He said that he would kill himself and started crying again. The investigators told him to calm down that everything would be alright. The investigator would ask question and then Applicant would answer until the confession was complete.

After the confession was given Mr. silvaggio left to print the confession and when he returned all the other officers left where it was just applicant and Mr. silvaggio who then told Applicant where to sign and initial saying that it would be O.K. Applicant initial in all the spots he was told to crying saying that he didnt care anymore and that he was going to kill himself cause all he wanted to do was die.

After the confession was signed Paul silvaggio then order two officers to place Applicant on suicide watch because he repeatedly expressed that he wanted to ~~to~~ take his own life.

The self-incrimination clause of the Fifth Amendment guarantees that no person shall be compelled in any criminal case to be a witness against himself, Withrow v. Williams, 113 S.Ct. 1745, 1751, 123 L.Ed. 2d 407. However, prior to the supreme court holding that the Fifth Amend. applied to the States, it held that

the Due Process Clause of the Fourteenth Amend. bars the admission of an involuntary confession.

In Miller v. Fenton, 474 U.S. 104, 109, 106 S.Ct. 445, 449, 88 L.Ed. 2d 405, it was held that by virtue of the Due process clause "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned." See also Moran v. Burbine, 475 U.S. 412, 432-434, 106 S.Ct. 1135, 1147, 89 L.Ed. 2d. 410.

It is correctly stated that as interrogators have turned to more subtle forms of psychological persuasion, Courts have found the mental condition of the defendant a more significant factor in the "Voluntariness" calculus. See Spano v. New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed. 2d 1265.

In Blackburn v. Alabama, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed. 2d 242, the Court found that petitioner was probably insane at the time of his confession and the police learned during the interrogation that he had a history of mental problems. In Applicant's case, investigators learned that he was in a special education class for kids with learning disabilities in school. As in Blackburn, the police exploited this weakness with coercive tactics: The manipulation of Applicant's phone call to get him in the presence of the investigators; the four-to five-hour sustained interrogation in a tiny room which was filled with police officers in the late hours of the night; the absence of Applicant's friends, relatives, or legal counsel; the compelling

notion to confess based on his father being convicted for the crime; the constant prompting of the investigators to confess; and the composition of the confession by the lead investigator rather than by the Applicant. These tactics support a finding that the confession was involuntary. Indeed, the Court specifically condemned police activity that "wings a confession out of an accused against will."

Mr. Justice Brandeis stated in Ziang Sung Wan v. U.S., 266 U.S. 1, 45 S.Ct. 1, 69 L.Ed 131, "In the Federal Courts, the requisite of voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion" Also see Brem v. United States, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568, 266 U.S., 14-15, 45 S.Ct. at 3. (Quoting Miranda v. Arizona, *Supra*.)

"It is now axiomatic that the defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity. Rogers v. Richmond, 365 U.S. 534, 544, 81 S.Ct. 735, 741, 5 L.Ed. 2d 760; Ziang Sung Wan v. U.S., *Supra*; Miranda v. Arizona, *Supra*.

Because Applicant's counsel's deficient performance he was prejudice by the admission of an incriminating confession that was the sole evidence presented to the jury for deliberation to bring them to it's conclusion and without it no reasonable jury would have found him guilty of murder.

(f) Counsel erroneously advised Applicant not to testify, even after Applicant told Counselor that what the investigator stated was not true. Counsel then attempted to persuade Applicant to lie on the stand, stating that the state was going to make him appear to be lying because there was no proof that the investigator was lying. Applicant told Counsel he would never lie on the stand and go against any oath before God. Counselor even admitted as much to the judge on the record, stating "[Applicant] didn't take the stand to any attempt to mislead anybody. In fact he told me he could not do that..." See transcript pg. 445 lines 4-6. Why would any client have to tell his lawyer he would not mislead anyone? Counselor then proceeded by telling Applicant not to testify because he felt he could win on closing argument. Therefore persuading Applicant not to testify on his own behalf.

(g) Counsel failed to object to several part of the prosecutor's closing argument.

See transcript for the following.

i on page 392 lines 10-21 states, "we also have to prove this defendant committed an aggravated assault and battery upon Jason Carver with the intent to kill him. How am I going to do that? Let me explain it right quick. He shot him in the head. My God. What does it take? What's more an egregious? What's more emphasis on intending to kill somebody that to shoot them in the head at point blank range with a revolver? If that's not assault and battery with intent to kill, ladies and gentlemen, I

don't know what is. We have to establish that to you beyond a reasonable doubt. I think we have established that."

These remarks sought no purpose but to inflame the passion of the jury, were conclusive, opinionative and an incorrect statement of law by giving the jury the initiative to conclude Applicant was guilty merely because the victim was shot in the head, when malice is an important element in an assault with intent to kill, furthermore it gave the jury the incentive find him guilty based on the fact that the prosecutor as already done so.

ii On pages 395 lines 23- pg. 396 line 2, states, "Gloria Heslep was home. Kenyatta Campbell was home. Jason Carver was there. And just because they happened to be there, this man shoots them. Ladies and gentlemen, that's murder. When you kill somebody simply because they were home, that's murder."

These remarks sought no purpose but to inflame the passions of the jury. There were no facts in the trial to substantiate Applicant killed anyone simply because they were home. This places in the mind of the jury that Applicant is a person with a heart devoid of social duty, and fatally bent on wrongdoing, when malice is defined as the wrongful intent to injure another and indicates a wicked or depraved spirit intent on wrongdoing, gives the jury the incentive to find Applicant acted with malice which is a necessary requirement to find him guilty of murder.

iii On pg. 404 lines 3-4 states, "He is guilty of murder ladies

and gentlemen and that's that's all there is to that."

This remark is clearly prejudicial. It is a statement that only is used to invite the jury to find Applicant guilty based on the incentive the prosecutor has already done so.

iv On pg. 392 lines 22 - pg. 393 line 7, States, "with regard to malice, His honor will tell you a legal definition of malice. I believe he will tell you something along the line of malice being evidenced by a malignant heart, a heart devoid of human - of the common human decency. Another thing I think he will tell you is that malice can be inferred by the use of a deadly weapon. This gun. If you take the gun -- if you take a gun and shoot somebody with it, there is enough evidence for you as jurors to find someone guilty of murder, because you infer malice when you take this gun and use it as a gun."

Again on pg. 393 lines 19-25 states "one thing I think he will tell you is that malpractice can be inferred by the use of a deadly weapon. This weapon. If you take gun -- or what that means, if you take a gun and shoot somebody with it, that is enough evidence for you as jurors to find someone guilty of murder, because you infer malice in the fact that someone uses a gun."

Again on pg. 401 lines 25 - pg. 402 line 7, States, "His Honor will give you a definition of what voluntary manslaughter is. He will say something along the line of voluntary manslaughter is the killing of another human being without malice aforethought. And as I told you, as simple as this, malice can simply be inferred

by the use of a deadly weapon. I mean, he's going to tell you that. That the fact that he used a gun and shot somebody is enough for you to find him guilty of murder."

These closing argument remarks gave a mandatory presumption of malice, which completely precluded manslaughter, and was prejudicial to Applicant's defense that he was guilty of manslaughter by creating a burden-shifting presumption.

Counsel's deficient performance fell below professional norms by not objecting to these remarks. Prejudice is shown through the permissive presumption of malice in all of these remarks which introduced an arbitrary factor into the jury deliberations. And had it not been for the admission of these remarks there is a possibility Applicant would have been acquitted of murder.

(h) Counsel failed to object to the judge's erroneous jury instruction.
See Transcript for the following:

On page 434 lines 9-17 states, "Inferred malice can also rise when the deed is done with a deadly weapon. A deadly weapon is an article or instrument which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon, of course, depends on the facts and circumstances from the case. You have to determine that, of course, a pistol under our law is defined as a deadly weapon."

The trial judge found that "It is equally well settled that to warrant the Court to eliminate the offense of manslaughter, it would very clearly appear that there is no evidence whatsoever tending to

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reduce the crime from murder to manslaughter, well its got to very clearly appear there is no evidence whatsoever. They all were under the influence of drugs. It's undisputed that the, defendant, I believe, was 18 years of age at the time. They were in a drug setting. They were all high. And he was a - - if you take the evidence in the light most favorable to the defendant, was a soldier. And it's been expressed that he knew that if didn't get either the money or the drugs, that he could possibly be killed. I'm not saying that's true, but I'm saying it's evidence to support that. In addition to that, the State, under the theory of the hand of one is the hand of all, has permitted the Co-defendant to plead to voluntary manslaughter. I'm not sure that it was reminded of that, but the State has made that concession..." See Transcript pg. 388 lines 23 - pg. 389 line 16.

The United States Supreme Court's pronouncement that the Due Process Clause of the Fourteenth Amendment is violated when the jury charge creates a mandatory presumption and impermissibly shifts the burden of proof to the defendant. See *Sands v. Montana*, 442 U.S. 510, 524, 99 S.Ct. 2450, 6 L.E.2d 39 (holding that "burden-shifting presumptions" or "conclusive presumptions" deprive a defendant of the "due process of law" and are therefore unconstitutional.

Prior to State v. Belcher, 385 S.C. 597, 685 SE 2d 802, where Court of South Carolina held that "the use of a deadly weapon implied malice instruction has no place in a murder or assault and battery with intent to kill prosecution where evidence

is presented that would reduce, mitigate, excuse or justify the killing," the Supreme Court of South Carolina has held that "In a prosecution for murder, the Applicant was deprived of the effective assistance of counsel where the defense counsel failed to object to a mandatory presumption of malice charge to the jury; although such a charge is subject to a harmless error analysis, such an analysis is inappropriate where there is evidence from which the jury could find the defendant guilty of the lesser offense of voluntary manslaughter, since a charge creating a mandatory presumption of malice precludes manslaughter and it would eliminate the Applicant's innocence of murder." See Carter v. State 301 S.C. 396, 392 S.E. 2d 184.

In the light of all this evidence presented here today under the ineffective assistance claim is as if Applicant had no counsel at all at trial.

"If no actual Assistance for the accused's defence is provided, then the constitutional guarantee has been violated." United States v. Cronin, supra. (internal quotations omitted)

2.) Prosecutorial Misconduct

The Prosecution's office failed to disclose the F.B.I. officer's reports and investigation that was exculpatory evidence material to Applicant's guilt or innocence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215, and Applicant's Due

Process rights. Applicant was interrogated by the F.B.I Agent who arrested him on the ride to Cobb County Detention Center where he invoked his Miranda rights. Had this evidence been disclosed to Applicant's trial attorney he could very possibly have substantiated the fact that had it not been for the police officer's continuous applying of pressure Applicant would have remained silent.

Applicant's attorney therefore could have gotten the incriminating confession suppressed and Applicant possibly would have been acquitted or convicted of the lesser offense of manslaughter due to the fact the confession was the sole evidence allowed to the jury for deliberation and its probative value outweighed all the other evidence at the trial, therefore prejudicial.

3.) Miscarriage of Justice

Applicant adverts, to the "fundamental miscarriage of justice" test in McCleskey v. Zant, 111 S.Ct 1454, 113 L.Ed.2d 517, which would permit consideration of his claims if they would likely result in a finding of "Actual Innocence". Comity and finality must yield to the imperative of correcting a fundamentally unjust incarceration.

Applicant does not claim to be innocent of a crime, merely that he is guilty of manslaughter and innocent of murder.

The witness testified that there was no type of altercations between anyone the night of the party. See transcript pg. 130 lines 11-14. Applicant's Co-defendant testified to this as well. See Transcript pg. 180 lines 22- pg. 181 line 9.

Applicant states that when he woke that morning that a Bond

of marijuana was missing that belonged to him. He knew that it was a Travis Jackson who took it. The state made it appear as if it was the victim, Kenyatta Campbell, who took it. Applicant states he told his trial lawyer that what the statement says is not how the events went at all. The investigator, Paul Silveggio, typed up what he thought was necessary and best to assist his case. The statement itself has inconsistencies.

Applicant states that after waking that morning he went to speak to Kenyatta about Travis taking his marijuana and that he was going to look for him.

Applicant then left and went home was there for about two hours. Before he left he got two pistols and went to a friend's house named Matthew Burdett. Applicant tried to borrow some money from him to pay for the missing marijuana so the people he owed did not come for him. Matthew did not have any money at the time and was leaving for work. Applicant then left in search of Travis. He went to Travis's father's house but there was no one there other than his grandmother. After leaving there Applicant's Co-defendant, Robert Smith, wanted to go see his mother at the pizza hut. Leaving pizza hut Applicant decided to go see if Kenyatta was up yet. Once he arrived at the trailer he went right in while Robert stayed in the car. He states that he went right to Kenyatta's room and started speaking with him. He told Kenyatta that he had to get that money or the feds back or some people was going to hurt him or possibly kill him. Applicant states that before the party he gave Kenyatta some pills, marijuana and cocaine.

on consignment until he sold out then he was to pay Applicant \$1,500. This had nothing to do with the pound of Marijuana that got stolen.

Applicant then told Kenyatta that he needed all of those drugs back and any money he made last night so he could fix this situation. He told Kenyatta that he knew it was not his fault but but he had to hurry up and get this taken care of. Kenyatta then told Applicant that he was not going to give him anything and that he could get out of his house. Applicant states he got mad and that he was scared he would not be able to get the money. He says he just lost it and fired two shots. He then backed out of the room and Gloria Heslep, the victim, came out of the back bed room running ~~out~~ up the hallway. Kenyatta kept coming at him and he back up into the living room. At this time Robert came running into the trailer with his pistol in his hand. Kenyatta kept coming at him and he shot him in the head. Without thinking he shot Gloria in the head. Robert Smith ran out of the trailer at this time. Applicant states that once he shot Gloria he finally realized what he had done. He states that the only time he actually thought about shooting anybody is when he shot Jason Carver. He states that he had no intentions on going there to shoot anyone nor did he have any problems with anyone there, as the state would make it seem. The state would like to make it appear that Applicant left and went home got some guns and went directly back to kill these people. That is not how it happened at all and shame on the state for implying that to be true when they knew that it was not.

Even with the false statements in Applicant's confession there is evidence aplenty to find Applicant guilty of manslaughter. And but for the aforementioned Constitutional violations of ineffective assistance of Counsel along with the misconduct of the Prosecutor followed up by the judicial misconduct of the Judge was overwhelming to the jury's deliberation and in effect created an impartial jury by ruling in favor of misstated law. In Applicant's case it is a total disregard of procedural due process by violating Due Process in almost every aspect of the law.

In the light of this new evidence, it is more likely than not that no reasonable juror would have found Applicant guilty beyond a reasonable doubt of murder, and would have more likely than not ruled in the favor of manslaughter. The result in Applicant's case is that the jury was excessively encouraged to find the Applicant guilty of murder, precluding manslaughter as a verdict, and rendering the trial unfair. Applicant was deprived of due process of law. A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concepts of justice.

Accordingly, "the end of justice dictate that when a condemned prisoner raises a substantial, colorable violation of the constitution of the United States, there is a special obligation... to consider whether the prisoner's claim would render his conviction fundamentally unfair and therefore an injustice." McCleskey v. Zant, *supra*.

"A clear miscarriage of justice has occurred if the

defendant was guilty of manslaughter and is now serving the penalty for murder." 204 U.S. App. D.C. 234, 240, 636 F.2d 506, 512 (Quoting United States v. Frady 456 U.S. 152; 102 S.Ct. 1584; 71 L.Ed.2d 816) ~ Justice Brennan, dissenting n. 10.

V Conclusion

Wherefore, having made a substantial Prima Facie Case, the Applicant orders this Court to rule on the merits of his claims and if it finds that there are grounds for relief to dispose of the matter as according to law.

I, Mario Ramos Hinojos J.R., being duly sworn upon my oath, depose and say that I have subscribed to the aforesaid motion; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true So help Me God.

Mario Hinojos

Dated this 5th day of
April 2013

Respectfully Submitted
Mario Hinojos 301870
Lee C/I SMU-S-184
990 Wisacky Hwy
Bishopville, SC 29010

State of South Carolina)
County of Greenville)
Mario Ramos Hinojas JR,)
SCDC No. 301870,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

In The Court of Common Pleas

C.A No. 2012-CP-23-07208

Affidavit of
Service By Mail

2013 APR 22 P 2:22

FILED
COURT OF COMMON PLEAS
PAUL B. WICK, CLERK

1. I am an Applicant in the above-captioned action.
2. Regular communication by mail exists throughout South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the motion for judgment by default in the above-caption matter on the following person by depositing same in the United States mail, postage prepaid:
Allon Wilson
Attorney General,
The State of South Carolina,
PO Box 11549,
Columbia, SC 29211

Dated this 5th day of April, 2013.

Mario Hinojas
Mario R. Hinojas 301870
Lee C/E SMU-S-184
990 Wilsack Hwy.
Bishopville SC 29010

pg. 1 of 6

State of South Carolina,)
County of Greenville,)

In The Court of Common Pleas

Mario Ramos Hingos JR,)
SCDC No. 301870,)
Applicant,)

Case No. 2012-CP-23-07208

Motion TO
Amend
Judgment By
Default

2013 APR 16 P 4:58

v.)
State of South Carolina,)
Respondent.)

ENTERED COMPUTER

Applicant submitted a motion For judgment by Default with this Court that was mailed on April 5 2013. Applicant asserts that he left out an important ground for relief that he would ask this Court to Allow him to assert it at this time.

Finding of Facts / Conclusion of Law

In Adom v. State, 523 S.E.2d 753(1991), the South Carolina Supreme Court dealt with the issue of successive PCR Applications, where this Court held, "a successive application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined or grounds waived in prior proceedings. In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application. Tilley v. State, 334 S.C. 24, 511 S.E. 2d 689.

Copy mailed to
Attorney General / Applicant
on 4 / 16 / 13

OVER

Additionally, [as in the Applicant's case], successive PCR applications are permitted in rare procedural circumstances. Case v. State, 277 S.C. 474, 289 S.E. 2d 413 (1982) (allowing a successive PCR application where the applicant's first PCR application was dismissed without assistance of legal counsel and without a hearing)."

The rule in this state is that where an application for Post-Conviction Relief alleges specific instances of ineffective assistance of counsel, which allegations are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by a hearing in the lower court. Rogers v. State, 261 S.C. 288, 199 S.E. 2d 761, Chambers v. State, 262 S.C. 202, 203 S.E. 2d 426., Coardes v. State, 262 S.C. 493, 206 S.E. 2d 264.

Applicant's original Application alleged that his trial counsel failed to render, in several particulars, effective and adequate representation at his trial, and as of a result thereof, he was wrongfully accused. While Applicant filed his original Application pro se, which was not raised adequately, the allegations therein were denied by the State's Return. It cannot be fairly said that all of the allegations are conclusively refuted by the record. It follows that the Application states facts that are sufficient to require an evidentiary hearing.

In Chambers v. State, supra, this court held, "The Uniform Post-Conviction Procedure Act, Section 17-611, [now S.C. Code Ann. § 17-27-110], provides that the Supreme Court may adopt such rules as it shall deem necessary to effectuate the

purposes of the Act. Pursuant to such authority, this court adopted Rule 5 which provides:

"After return is made by the State, if the Application presents questions of law or issues of fact requiring a hearing, the court shall appoint Counsel promptly to assist the applicant if he is an indigent person."

This rule is now recognized as Rule 71.1(d) S.C.R.C.P. Rules of procedure, like statutes, should be given their plain meaning. When the text of a rule is clear and unambiguous judicial inquiry is complete. See, e.g. Business Guides v. Chromatic Communications Enterprises, Inc., 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991) (clear and unambiguous text in the Federal Rules of Civil Procedure is given its plain meaning)

Applicant's original application for Post-Conviction Relief was based entirely upon his claim that he did not receive the effective assistance of counsel at trial and appeal because of their deficient performance and incompetency, which was in violation of his rights under the provisions of the Constitution of the United States. These allegations set forth a prima facie violation of the Applicant's constitutional rights, and raised a question of fact which could only be determined in the lower court by an evidentiary hearing.

Furthermore, the PCR court dismissed Applicant's allegations of ineffective assistance of counsel without making findings of fact on the specific allegations raised.

S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions

of law relating to each issue presented." (emphasis added). The PCR Court failed to make a finding of fact and conclusion of law regarding any of Applicant's claims, that renders the claims insufficient for appellate review and fail to meet the standard set forth in the Statute. see McCray v. State, 305 S.C. 329, 408 S.E.2d 241. "Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved" where, as in this case, a hearing is required to secure the rulings which should have been made initially." Povitt v. State, 310 S.C. 254, 423 S.E. 2d 127.

Applicant charges the PCR judge with error in dismissing his original application for Post-Conviction Relief without conducting an evidentiary hearing. He asserts that under S.C. Code Ann. § 17-27-70 states, "Disposition on the pleading and record is not proper if there exists a material issue of fact." Applicant submitted a brief along with his ~~original~~ original application that alleged several particular claims of ineffective assistance of counsel in detail, that were of such a kind as to "shock the conscience" of the court and make the proceedings a "farce and mockery of justice."

Assuming arguendo that such account is not credible, the record is completely silent as to whether or not Applicant was aware that he would waive previously raised grounds ~~by~~ or grounds not raised by asserting or re-asserting them in a subsequent application, where, the court failed to provide him with counsel who is better equipped with the knowledge and skill to enlighten Applicant and thus this

Court cannot find that Applicant made a deliberate, intentional relinquishment of a known right, which is essentially what a "waiver" is defined as legally.

Applicant filed a timely notice of appeal with this Court on his first application. The Assistant Attorney General Mrs. Karen C. Ratigan directed Applicant to the proper rules to follow. He had a hard time receiving the rules of courts from the law library and did not receive it until after ~~two~~ ^{three} (3) months later. He was under the impression that his appeal was actually pending and waiting to be appointed counsel. He did not realize till after he received the rules of courts that more was required than sending a mere "notice". This constitutes an "external factor" out side of the control of the Applicant.

Under P C R rules, an application or "one Bite at the Apple." Pramble v. State, 379 S.E. 2d 118 (1989). Successive P C R applications are generally disfavored because they allow an applicant more than one Bite at the Apple. Aice v. State, supra, Odum v. State, supra. In the present case, Applicant never received a full and fair opportunity to present his claims in his original Application, nor receive a full adjudication on the merits of his original Application, thus Applicant never received a "Full Bite At the Apple". See Austin v. State, 409 S.E. 2d 395 (1991). Since Applicant would not be receiving more than one Bite At The Apple, but rather Applicant would be receiving his "Full Bite At The Apple", wherein he would be entitled to a P C R evidentiary hearing, McCray v. State, supra, Pruitt v. State, supra, and effective assistance of counsel at that hearing. Martinez v. Ryan, supra,

pg 6 of 6

and or an Austin review.

Applicant asserts he sought Appellate review of his first PCR and was denied a fair opportunity due to Lee C/I's inadequate law library and did not knowingly and intelligently waive the right to appeal.

Hereby, Applicant would ask the Court to grant him an Austin Hearing.

I, Mario Hingos, do swear under oath that the aforementioned facts are true so help me God.

Dated this 9th day of
April 2013

Respectfully submitted
Mario Hingos

Mario Hingos 3d1870
Lee C/I SM-5-184
990 Wrecky Hwy.
Bishopville SC 29010
Applicant.

Cliff Counsel & Record
Attorney General
The State of South Carolina
PO Box 11667
Columbia SC 29211
Respondent.

State of South Carolina)
County of Greenville)

In The Court of Common Pleas

Mario Ramo Hingos JR,)
SCDC No. 301870,)
Applicant,)

Case No. 2012-CP-23-07208

Affidavit of

Service

By Mail

V.)
State of South Carolina,)
Respondent.)

2013 APR 16 P 4:58

FILED
GREENVILLE CO SC
PAUL B. WICKHAM, CLERK

1. I am the Applicant in the above-captioned case.
2. Regular communication by mail exists throughout the state of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Amend Judgment by Default in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Office of the
Attorney General
The State of South Carolina
PO Box 11549
Columbia SC 29211

Dated this 9th day of April 2013

Mario Hingos

Mario Hingos 301870
For Applicant.

State of South Carolina) In The Court of Common Pleas
 County of Greenville)
) Case No. 2012-CP-23-07203
 Mario Ramos Hingos JR,)
 SCDC No. 301870,) Affidavit of
 Applicant,) Service
 V.) By Mail
 State of South Carolina,)
Respondent.)

2013 APR 16 P 4: 59

FILED CLERK OF
 GREENVILLE CO. S.C.
 PAUL B. WICKERHISER

1. I am the Applicant in the above-captioned case.
2. Regular communication by mail exists throughout the state of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Amend Judgment by Default in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Office of the
 Attorney General
 The State of South Carolina
 P.O. Box 11549
 Columbia SC 29211

Dated this 9th day of April 2013

Mario Hingos
 Mario Hingos 301870
 For Applicant.

RECEIVED

MAY 16 2014

April 17th, 2013

Page 1 of 2

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

APR 23 2013

S.C. SUPREME COURT

RE: Hingos v. State, 2012-CP-23-07208

RECEIVED

Dear Mr. Shearouse,

This responds to your letter dated April 15th, 2013. Due to the law library not being up to date I never heard of the "Chief Justice's administrative order dated October 6, 2008. I thank this Court for the copy. The books here at this institution stop at the year of 2003. All other case law is on a computer which I did not become accessible to it until this year of 2013.

Although the issue of the state's failure to comply with Due Process was not addressed.

1) Can the State of South Carolina ignore the Rules of Civil Procedures and disregard the State and Federal Constitutions?

2) Is it not the Courts primary function to ascertain the intention of the legislature when interpreting statutes? see State v. Johnson, 502 S.E.2d 339

3) Are not Rules of procedures "like statutes" and "should

Pg. 2 of 2

be given their plain meaning" when interpreting them? See Whitehead v. State, 426 S.E.2d 315

4) If the state fails to comply with the applicable Rules of Courts when given a time line can they not be held in default? See Rule 55(a)(c), 54(c) SCRCP.

5) When a party to an action is held in default does it not constitute avoidance and deem a waiver of the right to assert any affirmative defenses?

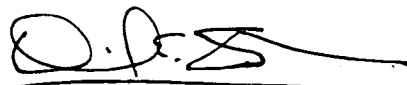
APRIL 23, 2013

THIS COURT CANNOT
PROVIDE ANY LEGAL
ADVICE OR ASSISTANCE.

THEREFORE, WE WILL
BE UNABLE TO RESPOND
TO YOUR QUESTIONS. IF
YOU NEED ASSISTANCE, YOU
SHOULD CONSULT WITH
AN ATTORNEY.

Respectfully submitted
Mario Hinojos

Mario Hinojos 301820
Lee c/e SMU-S-184
990 Wisaack Hwy.
Bishopville SC 29010
Applicant


cc: KCR
Karen C. Ratigan, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia SC 29211
Respondent.

Dated this day of April 17th
2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Mario Ramos Hinojos, Jr.,)
S.C.D.C. No. 301870,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
2012-CP-23-7208

RETURN AND MOTION TO DISMISS

FILED - CLERK OF COURT
GREENVILLE CO. SC
MAY 24 2013
2013 MAY 24 AM 9:12

In response to the post-conviction relief (PCR) application filed November 14, 2012, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the April 2003 term of the Greenville County Grand Jury for two (2) counts of murder (2003-GS-23-2931, -2944) and one (1) count of assault and battery with intent to kill (ABIK) (2003-GS-23-2977). He was represented by Thomas J. Quinn, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On May 12, 2004, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of life imprisonment for each count of murder and twenty (20) years for ABIK.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected

Copy mailed to
Applicant <u>Hinojos</u>
on <u>5</u> / <u>24</u> / <u>13</u>

the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Hinojos, Op. No. 2007-UP-176 (S.C. Ct. App. filed April 17, 2007).

The Applicant filed a PCR application on April 15, 2011 (2011-CP-23-2579). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
 - a. Failed to conduct proper pre-trial investigation.
 - b. Failed to challenge the voluntariness of the Applicant's statement at the Jackson v. Denno hearing.
 - c. Failed to object to malice charge.
 - d. Attempted to persuade the Applicant to lie on the stand.
2. Illegal search and seizure:
 - a. Lack of probable cause.
3. Ineffective assistance of appellate counsel:
 - a. Failed to explain PCR.

The Respondent submitted a return and motion to dismiss. The Honorable Robin B. Stilwell issued a conditional order of dismissal filed August 9, 2011 in which the Applicant was given twenty days to demonstrate why the PCR application should not be dismissed based on the expiration of the statute of limitations. Though the Applicant filed a response, Judge Stilwell issued a final order of dismissal filed October 21, 2011. The Applicant did not file an appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Prosecutorial misconduct.
3. Errant jury instructions.
4. Subject matter jurisdiction.
5. Miscarriage of justice.
6. First PCR judge erred.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

In a document captioned "Motion to Amend Application for Post-Conviction Relief" filed February 7, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to move to quash indictment.
 - b. Failed to move for a mental and psychiatric evaluation/competency hearing.
 - c. Refused to allow the Applicant to assist in his own defense by refusing to allow access to his discovery materials.
 - d. Failed to object to prosecutor's closing argument.
2. Prosecutorial misconduct:
 - a. The prosecutor made inflammatory and prejudicial remarks in closing argument.
 - b. Withheld impeaching and exculpatory evidence material to the Applicant's guilt or innocence.
3. Subject matter jurisdiction:
 - a. Indictments were secured with evidence that was fraudulent.
4. Miscarriage of justice:
 - a. The Applicant claims actual innocence.
5. First PCR judge erred:
 - a. Failed to appoint counsel.
 - b. Failed to make specific findings of fact.

For the purpose of this Return, the Respondent incorporates the Greenville County Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the

sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offenses he challenges in this application on May 12, 2004 and the South Carolina Court of Appeals dismissed his appeal on April 17, 2007. The Applicant was therefore required to file his application before April 17, 2008. This application was filed on November 14, 2012, which was over four years beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

The Court should also summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a

subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent submits the Applicant has failed to set forth any evidence to support his claim of prosecutorial misconduct. As such the issue should be dismissed. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

VI.

The Respondent submits the Applicant's assertion that the trial court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary

elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VII.

The Respondent submits the Applicant has raised an issue related to jury instructions that is not cognizable in a PCR action. Rather, this allegation raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial or on appeal**. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as a ground for relief. Similarly, if the Applicant wanted to argue the judge erred in denying his first PCR application, the correct means to do so would have been through an appeal to the South Carolina Supreme Court.

VIII.

The Respondent denies each allegation not expressly admitted, qualified or explained.

IX.

WHEREFORE, the Respondent moves to summarily dismiss the application because it is successive to the prior PCR action and filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

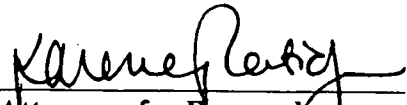
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 30, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

2012-CP-23-7208

MARIO RAMOS HINOJOS, JR., 301870)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

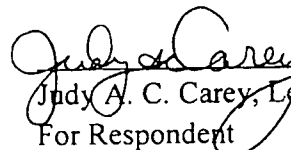
Respondent)

2013 MAY 24 AM 9:12
FILED-CLERK OF COURT
GREENVILLE CO
PAUL B. WICKENS

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Mario Ramos Hinojos, Jr., 301870
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 30th day of April, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

State of South Carolina)
County of Greenville)

Mario Ramos Hinojos DR,)
SCDC No. 301870)

Applicant,)

v.)

State of South Carolina)
Respondent.)

In The Court of Common Pleas

Case No. 2012-CP-23-07208

Reply

2013 MAY 21 P 2:23

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINER

In response to Respondent's Return and Motion To Dismiss
filed May 1 2013, the Applicant would show this Court:

I

Applicant filed this application for Post-Conviction Relief on
November 14, 2012. Upon the Respondent's failure to comply with
the applicable time frame stipulated in Rule 12(a) SCRCP
Applicant moved the court for judgment by default pursuant to
Rule 55 SCRCP filed April 5th, 2013.

Respondent has made its Return and has failed to provide
this Court with good cause why judgment by default should
not be granted.

II

Rule 71.1(a) SCRCP provides:

The procedure for post-conviction relief is provided by
the Uniform Post-Conviction Procedure Act (Act), S.C. Code

Ann, §§ 17-27-10 to -120 (1985). "The South Carolina Rules of Civil Procedure shall apply to the extent that they are not inconsistent with the Act."

The Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-80 provides in pertinent part:

"All rules and statutes applicable in civil proceedings are available to the parties."

S.C. Code Ann §§ 17-27-70^(a) provides in pertinent part:

"Within thirty days after the docketing of the application, or within any further time the Court may fix, the State shall respond by answer or by motion..."

Rule 12(a) SCRPC provides in pertinent part:

... in a Post-Conviction Relief proceedings the State shall make their Return within... 90 days for a trial.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E. 2d 6 (1993). Under the "Plain meaning rule", it is not the Court's place to change the meaning of a clear and unambiguous statute. In re Vincent D., 333 S.C. 233, 509 S.E. 2d 261 (1993)

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the Courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992) If the legislature's intent is clearly apparent from the statutory language, a Court may not

embark upon a search for it outside the statute. Abell v. Bell, 229 S.C. 1, 91 S.E. 2d 548 (1956). When the language of a statute is clear and explicit, a Court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning. Timmons v. South Carolina Triennial Comm'n, 254 S.C. 378, 175 S.E. 2d 805 (1970). In such circumstances, this Court simply lacks the authority to look for or impose another meaning... Berkshire v. Outen, 311 S.C. 50, 426 S.E. 2d 760 (1993).

Likewise when interpreting language of Court Rule, Court of Appeal applies same rules of construction used in interpreting statutes, and thus words of rule must be given their plain and ordinary meaning without resort to subtle forced construction to limit or expand the rule. State v. Brown, 543 S.E. 2d 568 (S.C. App. 2d)

Because the statute setting forth a 30 day period, which was extended into a 90 day period, for execution on an answer operates as a statute of limitations, it constitutes a matter of avoidance under ~~governing~~ rule governing the pleading of affirmative defenses, and must be raised in the trial court when the defense became available. Linda Mc Company, Inc. v. Shore, 375 S.C. 432, 653 S.E. 2d 279 (S.C. App. 2007)

General, affirmative defenses to a cause of action in any pleading must be asserted in a parties responsive pleading. Because the Respondent has failed to file a responsive pleading in the statutory time frame constitutes an avoidance and amounts

to a Waiver of the Right to assert an affirmative defense

III

The Respondent claims that this Application for Post-conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act S.C. Code Ann. §§ 17-27-45 (a)

Applicant explained to the Court in his original application that his appellate Counsel never advised ~~he~~ nor explained to him of his right to PCR. Respondent argued that South Carolina Supreme Court has held that appellate counsel is not required to advise a defendant of PCR remedies, citing Sutton v. State, 361 S.C. 644, 606 S.E. 2d 779 (2004).

Applicant contends that claims of ineffective assistance of trial Counsel can only be raised in State Collateral proceedings, (PCR), not on direct review, "this Collateral proceeding in many ways becomes equivalent of Applicant's direct appeal as to the ineffective-assistance-of-trial-counsel claim." Martinez v. Ryan, 132 S.Ct. 1309 (2012). Also in Clement v. Thompson, 541 U.S. 722, 753 754, 111 S.Ct. 2546, 115 L.Ed. 2d (1991), it was noted. "This makes the initial-review collateral proceeding a prisoner's 'one and only appeal' as to an ineffective-assistance-of-trial-counsel claim," therefore, Applicant contends pursuant to Douglas v. California, 372 U.S. 353, 357, 83 S.Ct. 814, 9 L.Ed. 2d 311 (1963). Applicant has a right, as of right, to appointment of Counsel on his first appeal of ineffective-assistance-of-trial-counsel claims.

Applicant further states that it therefore is obligatory upon his appellate Counsel to advise him that his only avenue of

redress is through a state habeas collateral proceeding and to assist him in perfecting the state habeas.

Where, here, in the case before us, Counsel at trial was grossly ineffective for not preserving any trial errors for the record, which Applicant's attorney on direct appeal could not raise due to the procedural bar, which occurred on account of his trial counsel's unprofessionalism and if Applicant's appellate attorney does not inform him of the right to an initial collateral review, Applicant being a poor layperson, it will most often result in an applicant becoming procedurally defaulted.

The Sixth Amendment itself requires that responsibility for the default be imputed to the state, see Evitts v. Lucey, 409 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed. 2d 821 (1985). (Holding, "The constitutional mandate [guaranteeing effective assistance of counsel] is addressed to the action of the state in obtaining a criminal conviction through a procedure that fails to meet the standard of due process of law.") This was explained in Murray v. Carrier, 477 U.S. 478, 485, 495, 106 S.Ct. 2639, 2644, 2649, 91 L.Ed. 2d 397, and was reiterated in Coleman, *supra*, at 754, 111 S.Ct. 2546; Martinez, *supra*, at 1324, 132 S.Ct. 1309.

By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims. Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in a

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Court opinion or the prior work of an attorney addressing that claim" Martinez v. Ryan, Supra.

Hereby, Applicant contends that, by the state allowing an appellant's attorney to just abandon a case without first having to appraise the defendant of his right to appeal his counsel's ineffectiveness for the first time, being an appeal as of right, is against the Constitution of the Supreme Law of the Land and error in the lower court, for the defendant unlearned in the law, may not comply with the state's procedural rules or may misapprehend the substantive details of federal constitutional law. Therefore it should be made obligatory upon all appellate counsels to inform their clients on how to properly file an ineffective-assistance-of-trial-counsel claim pursuant to Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989), which this court held, "all defendants who have been found guilty of a crime have a right to be informed of the possibility of appeal" (emphasis added). See also White v. State, 263 S.C. 110, 208 S.E. 2d (1974); Rule 51(E)(4) Sup.Ct. Rules and Rule 602 (E)(4) S.C. A.C.R. In initial-collateral-review proceedings of ineffective-assistance-of-trial-counsel an applicant's attorney on appeal should possess the express duty to assist their clients in properly perfecting their appeals of ineffective-assistance-of-trial-counsel which is the first appeal of that claim, therefore, "a right" under Douglas v. California, Supra. In Applicant's original Application the State cited Sutton v. State, 361 S.C. 644, 606 S.E. 2d 779 (2004) where the South Carolina Supreme Court held that appellate counsel is not required to advise of PCR. Applicant would now contest the constitutionality of that decision.

The Due process Clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first

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appeal as of right. "The promise of Douglas v. California, *supra*, that a criminal defendant has a right to counsel on appeal - like the promise of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799, that a criminal defendant has a right to counsel at trial - would be a futile gesture unless it comprehended the right to effective assistance of counsel." Evitts v. Lucey, *supra*

Gideon v. Wainwright, *supra*, held that the Sixth Amendment right to counsel was "so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the states by the Fourteenth Amendment." *Id.*, 372 U.S. at 340, 83 S.Ct. at 794, quoting Betts v. Brady, 316 U.S. 455, 465, 62 S.Ct. 1252, 1257 86 L.Ed. 1595 (1942) Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) see also Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 1019, 82 L.Ed. 158 (1932).

Gideon rested on the "obvious truth" that lawyers are "necessities not luxuries" in our adversarial system of criminal justice, 372 U.S. at 341, 83 S.Ct. at 796, "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 853, 862, 95, S.Ct. 2550, 2555, 45 L.Ed. 2d 593 (1975). The Applicant's liberty depends on his ability to present his case in the face of "the intricacies of the law and the advocacy of the public prosecutor," United States v. Ash, 413 U.S. 300, 309, 93 S.Ct. 2568, 2573, 37 L.Ed. 2d 619 (1973) a criminal trial is thus not conducted in accord with due process of law unless the defendant has had competent counsel to represent him. Not being apprised of the right to appeal is as if there is no right at all.

In bringing an appeal as of right from his conviction, Applicant

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is attempting to demonstrate that the conviction, with its consequent drastic loss of liberty, is unlawful due to his so much needed right of counsel was violated. To prosecute the appeal, Applicant must face an adversary proceeding that - like a trial - is governed by intricate rules that to a layperson would be hopelessly forbidding. An unrepresented appellant - like an unrepresented defendant at trial - is unable to protect the vital interests at stake. To be sure, Applicant did have nominal representation when he brought his appeal. But nominal representation on appeal as of right - like nominal representation at trial - does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all.

Here, where the initial-review collateral proceeding is the first designated proceeding for Applicant to raise the ineffective - assistance-of-trial-counsel claim, the collateral proceeding is the equivalent of Applicant's direct appeal, which he has as of right, because the P C R Court decides the claim's merits, no other court will address the claim unless first raise in P C R, and defendant's "are generally ill equipped to represent themselves" where they have no brief from counsel and no court opinion addressing their claim, Halbert v. Michigan, 545 U.S. 605, 617, 125 S.Ct. 2582, 162 L. Ed. 2d 552. An attorney's errors during an appeal on direct may provide cause to excuse a procedural default; for if the defendant's attorney appointed by the state is ineffective, the prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on the merits of his claim. Without

adequate representation in an initial-review collateral proceeding, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim. The same would be true if the state, as in Applicant's case, did not appoint an attorney for the initial-review collateral proceeding.

"A prisoner's inability to present an ineffective-assistance-of-trial-counsel claim is of particular concern because the right to effective trial counsel is a bedrock principle in this Nation's Justice System." Martinez v. Ryan, *Supra*.

For the aforementioned reasons set out above Applicant contends he should be excused and not barred by S.C. Code Ann. § 17-27-45(a) due to his appellate counsel's failure to properly inform and assist him, which resulted in prejudice by the fact that his statute of limitations expired, thereby defaulting his ineffective assistance claim, making it extremely difficult for Applicant to be heard and but for his appellate counsel's deficient performance, in violation of the rules of professional conduct Rule 407 rules 1.1, 1.3, 1.4(a)(2)(b) [1.5], 3.1, (1)(3) of the SCACR, Applicant would have filed a timely PCR and received the proper adjudication on the merits of his claims.

IV

Respondent contends this application should be dismissed due to the Applicant's failure to present any reasons why he could not have raised the current allegations in his previous post conviction relief application.

Applicant would direct the Respondent to a motion filed with this court April 16, 2013 titled Motion To Amend Judgment By Default.

Furthermore the application itself alleges the reason why Applicant could not have raised these additional grounds due to the inability to adequately research the law. Applicant currently has a number of grievances filed with the institution on the matter.

Applicant filed a document that proved this with this court and did not receive notice of it. Applicant is in possession of documents that proves the inadequate law library here a wee C/I. Although Applicant only has the originals because he is not able to obtain copies due to his fear of losing the documents themselves.

The document he filed with this court plainly stated he was not accessible to the law computer due to his administrative segregation status. And because of this status he is only able to receive 3 law cases a week because books were not allowed. The most up to date S.E. 2d is Vol. 578 which is of the year of 2003. All other recent case law is on the computer, which wee county Administrative Segregation Unit did not have until this year of 2013. Before then it was like a fishing expedition. Applicant would request three cases a week and hope that one was useful, or lead you to a case that was, because if Applicant did not have a cite to a case he could not get the book to actually research errors of the law. Therefore it is a very slow process

studying at the rate of three law cases a week and then to be expected to combat individuals whom have years of research invested in their litigations. This constitutes an external factor outside of the control of the Applicant.

S.C. Code Ann § 17-27-90 States:

"All grounds for relief available to an applicant under this Chapter must be raised in his original, supplemental, or Amended application... unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application"

Therefore, due to insufficient access to law resources Applicant was not able to adequately raise those grounds for relief in his original application and therefore should be excused and not barred as successive.

V

The Respondents Contentions of the Applicant's Claim that the trial court lacked subject matter jurisdiction is without merit cannot stand.

Respondent would argue that the indictments were, on their face, sufficient and that indictments are not evidentiary or jurisdictional documents - they are merely notice documents. That is not sufficient in itself to determine whether the trial court lack subject matter jurisdiction, when the sole witness that went before the grand jury was the lead investigator, an officers of the state, whom also swore under oath for issuance

of an arrest warrant to a magistrate on an affidavit to information he could not have had. If this investigator would mislead a magistrate judge this Court cannot say whether or not he would do the same in grand jury proceedings and in fact must assume there is a likely probability he would do like wise in the grand jury proceedings. If the grand jury proceedings were not conducted in accord with due process and the indictments secured through deceitful means or with evidence which was "the fruit of a poisonous tree" or based on fraudulent or misleading information the indictments themselves would be null and void and therefore the trial court would lack subject matter jurisdiction or it would amount to the complete deprivation of procedural due process to the Applicant.

Applicant bases this on the South Carolina Constitution Art I § 11 which provides:

"No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed."

SC Const. Art I § 3 provides:

"The privileges and immunities of citizens of this state and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws."

Procedural due process requires (1) adequate notice; (2) adequate opportunity to be heard; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses. Therefore if the indictment or "notice" is null and void then Applicant should not have been "held to answer for any crime the jurisdiction over which is not within the Magistrate's Court" due to the insufficient "notice".

It is the generally accepted rule in this jurisdiction that a grand jury has supervision of the enforcement of law and order, the preservation and protection of morals and social order, supervision of public offices, the inspection and examination of the books of such offices, and conduct of them by the officers occupying them, and thing of like import. Yet if the officer whom is the sole witness who testifies before the grand jury is corrupt and taint the proceedings then it makes the judicial system a mockery and due process non-existent.

VI

Respondent argues that the Applicant has failed to set forth any evidence to support his claim of prosecutorial misconduct and that issues related to error by trial judge should have been raised on appeal.

Applicant would like to inform Respondent that all grounds for relief are under the guise of ineffective assistance of counsel which requires and evidentiary hearing to determine the merits of the claims.

Respondent also would argue that errors of first PCR judge should have been raised on appeal.

Applicant would ask the court for a belated appeal, in accords with King v. State, 417 S.E.2d 868 pursuant to Austin v. State, 409 S.E.2d 395 which would require a hearing.

VII

Wherefore, the Applicant moves this Court for an evidentiary hear to review the merits of his claims or for sentence to be set aside and Applicant to be retried.

Respectfully submitted,

Mario Hingos

Mario R. Hingos 301870
Lee C/I SMO-S-184
990 Wisacky Hwy.
Bishopville SC
29010

Dated this 15 day of
May, 2013

State of South Carolina
County of Greenville

) In The Court of Common Pleas

) 2012-CP-23-07208

Mario Ramos Hinojos JR,
SCDC No. 301870,

) Applicant,

v.

State of South Carolina

) Respondent.)

Affidavit of
Service By
Mail

2013 MAY 21 P 2:24

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

I am the Applicant in the above Captioned action.
Regular communication by mail exists throughout the State of
South Carolina and that this is a proper circumstance of service
by mail.

I have this day served a copy of the Applicant's Reply in the
above-captioned matter on the following persons by depositing in
the United States mail, postage prepaid:

Karen C. Ratigan
Office of Attorney General
Post office Box 11549
Columbia SC 29211

The Honorable D. Garrison Hill
305 East North St. Suite 213
Greenville SC 29601

Dated this 15 day of
May 2013

Respectfully Submitted,

Mario Hinojos

Mario Hinojos 301570
990 Wilsack Hwy
Bishopville SC 29010

RECEIVED

June 6 2013

JUN 12 2013

Dear

Daniel E. Shearouse,

S.C. SUPREME COURT

2013-001278

Sir, I am having an issue here at Lee C/I with improper access to the courts. I am being denied the ability to ~~obtain~~ obtain copies nor has the law library been accessible for (2 1/2) two and half weeks. I am to go to court on June 20, 2013, Mario Ramos Hingos vs. State of South Carolina, Respondent, Case No - 2012-CP-23-07208 filed with the Greenville Clerk of Courts office.

I would have to ask the courts to intervene with the Institution here at Lee County. I am being denied the ability to prepare a defense.

I have spoke with officer Johnson, Sgt Mack whom both have told Capt. Commander. Warden McCall has come on the rock once in the past 2 months and when I attempted to speak with him he walked right past me as if my matters do not concern him.

I swear under penalty of perjury the foregoing is true and correct.

Respectfully Submitted

Mario Hingos

Mario Hingos 301870

Lee C/I Gnu-S-184

990 Wasacky Hwy

Bishopville SC 29310

Bridgette Godbold

From: SCDEfilingstat@scd.uscourts.gov
Sent: Monday, January 06, 2014 11:27 AM
To: scd_ecf_nef@scd.uscourts.gov
Subject: Activity in Case 2:13-cv-01900-JFA-BHH Hinojos v. South Carolina Department of Corrections et al Response in Opposition to Motion

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered by Bratton, James on 1/6/2014 at 11:26 AM EST and filed on 1/6/2014.

Case Name: Hinojos v. South Carolina Department of Corrections et al

Case Number: 2:13-cv-01900-JFA-BHH

Filer: William Byars

Mr Davis

Mrs Eastridge

Michael McCall

Anthony Padula

Document Number: 60

Docket Text:

RESPONSE in Opposition re [58] MOTION to submit into evidence Response filed by William Byars, Mr Davis, Mrs Eastridge, Michael McCall, Anthony Padula. Reply to Response to Motion due by 1/16/2014 (Bratton, James)

2:13-cv-01900-JFA-BHH Notice has been electronically mailed to:

James Rufus Bratton , III jrb@aikenbridges.com, bdg@aikenbridges.com

Samuel F Arthur , III sfa@aikenbridges.com, twd@aikenbridges.com

2:13-cv-01900-JFA-BHH Notice will not be electronically mailed to:

Mario Ramos Hinojos, Jr

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Mario Ramos Hinojos, Jr.,)
S.C.D.C. No. 301870,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2012-CP-23-7208

CONDITIONAL ORDER OF DISMISSAL

2012 MAY 14 PM 3:06

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the April 2003 term of the Greenville County Grand Jury for two (2) counts of murder (2003-GS-23-2931, -2944) and one (1) count of assault and battery with intent to kill (ABIK) (2003-GS-23-2977). He was represented by Thomas J. Quinn, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On May 12, 2004, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of life imprisonment for each count of murder and twenty (20) years for ABIK.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected

the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Hinojos, Op. No. 2007-UP-176 (S.C. Ct. App. filed April 17, 2007).

The Applicant filed a PCR application on April 15, 2011 (2011-CP-23-2579). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
 - a. Failed to conduct proper pre-trial investigation.
 - b. Failed to challenge the voluntariness of the Applicant's statement at the Jackson v. Denno hearing.
 - c. Failed to object to malice charge.
 - d. Attempted to persuade the Applicant to lie on the stand.
2. Illegal search and seizure:
 - a. Lack of probable cause.
3. Ineffective assistance of appellate counsel:
 - a. Failed to explain PCR.

The Respondent submitted a return and motion to dismiss. The Honorable Robin B. Stilwell issued a conditional order of dismissal filed August 9, 2011 in which the Applicant was given twenty days to demonstrate why the PCR application should not be dismissed based on the expiration of the statute of limitations. Though the Applicant filed a response, Judge Stilwell issued a final order of dismissal filed October 21, 2011. The Applicant did not file an appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Prosecutorial misconduct.
3. Errant jury instructions.
4. Subject matter jurisdiction.
5. Miscarriage of justice.
6. First PCR judge erred.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

In a document captioned “Motion to Amend Application for Post-Conviction Relief” filed February 7, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to move to quash indictment.
 - b. Failed to move for a mental and psychiatric evaluation/competency hearing.
 - c. Refused to allow the Applicant to assist in his own defense by refusing to allow access to his discovery materials.
 - d. Failed to object to prosecutor’s closing argument.
2. Prosecutorial misconduct:
 - a. The prosecutor made inflammatory and prejudicial remarks in closing argument.
 - b. Withheld impeaching and exculpatory evidence material to the Applicant’s guilt or innocence.
3. Subject matter jurisdiction:
 - a. Indictments were secured with evidence that was fraudulent.
4. Miscarriage of justice:
 - a. The Applicant claims actual innocence.
5. First PCR judge erred:
 - a. Failed to appoint counsel.
 - b. Failed to make specific findings of fact.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offenses he challenges in this application on May 12, 2004 and the South Carolina Court of Appeals dismissed his appeal on April 17, 2007. The Applicant was therefore required to file his application before April 17, 2008. This application was filed on

November 14, 2012, which was more than four years and six months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the

Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

This Court finds the Applicant has failed to set forth any evidence to support his claim of prosecutorial misconduct. As such the issue must be dismissed. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

VI.

This Court finds the issue of a purported lack of subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appraises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VII.

This Court finds issues related to error by the trial judge or first PCR judge should have

been raised on appeal. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial** or **on appeal**. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). These issues must be dismissed.

VIII.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 7th day of May, 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-7208

MARIO RAMOS HINOJOS, JR., 301870)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

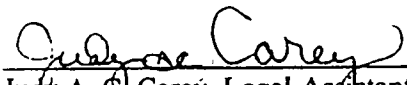
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing in the United States mail, postage prepaid:

Brian P. Johnson, Esquire
522 North Church Street
Greenville SC 29601

DATED this 11th day of September, 2013.


Judy A. Carey, Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2012-CP-23-7208
COUNTY OF GREENVILLE	)	
	)	
Mario Ramos Hinojos, Jr.,	)	
S.C.D.C. No. 301870,	)	
	)	
Applicant,	)	
	)	FINAL ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. The Respondent made its return on April 30, 2013, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated May 7, 2013 and filed May 14, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

The Applicant filed a motion for default. This Court ordered a hearing set on this motion and for counsel to be appointed to represent the Applicant. A hearing was held on August 30, 2013 before the Honorable Robin B. Stilwell. The Applicant was present and represented by Brian P. Johnson, Esquire. Judge Stilwell denied the motion for default by order filed August 30, 2013. Attached to this Final Order and incorporated herein by reference is a Certificate of

Service dated September 11, 2013, serving the Conditional Order of Dismissal upon the Applicant's attorney. This Court notes the Applicant's attorney has failed to submit a response to the Conditional Order of Dismissal. Out of an abundance of caution, however, this Court will address the pro se filings submitted prior to counsel's appointment.

In a document captioned "Motion to Amend" and filed May 17, 2013, the Applicant argues his trial counsel "failed to request the charge on murder v. manslaughter required by State v. King, 158 S.C. 251, 155 S.E. 409 (1930)." The Applicant argues trial counsel should have objected to the trial judge's jury charge.

In a document captioned "Reply" and filed May 21, 2013, the Applicant argues his appellate counsel "never advised nor explained to him of his right to PCR." The Applicant argues he has a right to counsel in this case. The Applicant argues that "deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." The Applicant argues he was unable to previously raise the issues in his current PCR application "due to the inability to adequately [sic] research the law." The Applicant argues the grand jury was improperly conducted and the trial judge did not have subject matter jurisdiction in his case. The Applicant argues he is entitled to belated appeal.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on May 12, 2004 and the South Carolina Court of Appeals dismissed the appeal on April 17, 2007. As this action was

filed on November 14, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980); see also Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("[A]n applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

This Court notes that – as addressed in the final order of dismissal from the Applicant's first PCR application – appellate counsel is not required to advise a defendant of post-conviction remedies. See Sutton v. State, 361 S.C. 644, 606 S.E.2d 779 (2004) overruled on other grounds by Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005).

This Court finds the Applicant's claim that the trial court lacked subject matter jurisdiction is without merit. Indictments are not jurisdictional in nature, they are merely notice documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds the indictments for murder (2003-GS-23-2931, -2944) and assault and battery with intent to kill (2003-GS-23-2977) were true-billed and clearly adequate to provide notice of the charges the Applicant was facing. This Court finds the Applicant has failed to present any credible evidence that the grand jury proceedings were improper or that the trial judge did not have subject matter jurisdiction.

This Court finds the Applicant is not entitled to an appeal. The Applicant had an appeal from his trial. The Applicant – who represented himself on his first PCR application – failed to file an appeal from the order of dismissal in that case. This Court notes the final paragraph of that order informed the Applicant of the appeal deadline and procedure. This Court finds the

Applicant was aware of his appellate rights and chose not to pursue them.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this _____ day of _____, 2013.

D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

1 CROSS EXAMINATION BY MR. QUINN:

2 Q. Mr. Carver, did you give a statement to the police
3 about this case?

4 A. No, sir, because at the time the detective asked me, I
5 was just getting out of surgery and I was on medication.

6 Q. And they didn't ever have you come back to give them a
7 statement?

8 A. No, sir.

9 Q. What about the solicitor's office? Have you met with
10 Mr. Steinberg before?

11 A. Once or twice.

12 Q. And did he ask you to write out a statement or give any
13 statement?

14 A. No, sir.

15 Q. Okay. Why were you living with Kenyatta and Gloria in
16 June of 2002?

17 A. It was the summertime. I was dating the girl. We were
18 selling drugs.

19 Q. And what -- you were selling --

20 A. Pot.

21 Q. -- pills and marijuana?

22 A. No, we were just selling pot.

23 Q. And why did they Kenyatta Yoda?

24 A. The only reason I can tell you is that he had a dog on
25 his arm. I guess his nickname, I guess. I don't know.

1 A. No, sir, I did not.

2 Q. Were you in the chain of custody of any evidence that
3 was collected by others?

4 A. None whatsoever, sir.

5 Q. So your role primarily was that of just backup
6 detective, backup investigator?

7 A. Yes, sir, more of a support role.

8 Q. Were you present during the interview of Robert Joel
9 Smith?

10 A. Yes, sir.

11 Q. All right. And was the procedure and the protocol
12 pretty much the same as you described as for Mr. Hinojos'
13 interview?

14 A. Yes, sir, it was.

15 Q. All right. Was there a waiver taken?

16 A. It was, sir.

17 Q. And was there a subsequent statement taken from him?

18 A. Yes, sir, it was.

19 Q. Was that done in the form of question and question, or
20 was that primarily done as a narrative?

21 A. A narrative as he's telling his story.

22 Q. All right, sir.

23 When did you first arrive on the crime scene, at the
24 crime scene that morning?

25 A. The date it happened, I don't remember the exact time.

1 10:30 in the morning, I believe, somewhere around in that
2 area.

3 Q. And were the victims bodies still at the crime scene?

4 A. There were two bodies on the scene and a victim -- one
5 victim had been transported by EMS for medical.

6 Q. And you didn't -- I think I have asked you this
7 already, but you didn't participate in the collection of or
8 the placing any evidence into property and evidence?

9 A. No, sir.

10 MR. QUINN: Objection, leading.

11 THE COURT: Okay.

12 BY MR. WESTON:

13 Q. Let me rephrase it.

14 Did you participate in the collection of any evidence?

15 A. No, sir, I did not.

16 MR. QUINN: Objection. Asked and answered.

17 THE COURT: We have been over that already.

18 MR. WESTON: All right.

19 That's all I have of this witness.

20 CROSS EXAMINATION BY MR. QUINN:

21 Q. You say that you had this statement notarized?

22 A. Yes.

23 Q. Did the notary see anybody sign the statement?

24 A. Yes, sir, they were brought into the room when all the
25 signatures were done and present in the room when the

1 signatures were signed and saw the defendant sign it.

2 Q. So they were there for four and a half hours?

3 A. No, sir, they were not.

4 Q. Were they there during the provision of the rights?

5 A. No, sir, they were not.

6 Q. And so the first page is notarized, the notary didn't
7 see any of those signatures being attached to?

8 A. On the waiver of rights, no, sir.

9 Q. And if that's the only page that's notarized, then the
10 notary may not be real effective, isn't that right?

11 A. Repeat the question, sir, I'm sorry.

12 Q. Isn't the notary supposed to come in and say I saw so
13 and so sign a document?

14 A. Yes.

15 Q. And I believe your testimony is that the notary was not
16 there during the advise of rights?

17 A. My mistake. I do see where the notary was -- his seal
18 was done -- or her seal was done, I'm sorry, and was in the
19 room when it was the signatures were made. Not during the
20 reading of it, but the signatures are made, they were there,
21 sir.

22 Q. Did you just tell me something different?

23 A. I did, sir, but I was looking at the statement and not
24 the waiver, but they were present because their seal is
25 here. They were brought in the room for their signatures.

1 Q. So they were present throughout the entire --

2 MR. WESTON: Objection.

3 THE WITNESS: They were there for the purposes of
4 signatures.

5 MR. WESTON: Objection, Your Honor.

6 THE COURT: I'm going to let him try to clear it
7 up because it was confusing. Go ahead.

8 MR. QUINN: I'm sorry.

9 BY MR. QUINN:

10 Q. So was the notary present throughout the entire
11 statement?

12 A. No, sir, they were not.

13 Q. Did the notary come in, leave, and come back?

14 A. Yes, sir, they did. They were there just for the
15 purposes of the signatures being notarized, that that was
16 their statement. They saw the signatures being done and
17 notarized that that was their person or that person that was
18 signing the statement.

19 Q. So how many times does the notary come into the room?

20 A. Just twice that I know of, during the statement itself
21 and the waiver of rights.

22 Q. And do you agree that the only thing that's notarized
23 is, in fact, the waiver of rights?

24 A. The waiver and the statements themselves are notarized.

25 Q. And I believe you said that you as investigators

1 normally travel with a laptop, is that correct?

2 A. That's correct.

3 Q. You also normally travel with pen and paper?

4 A. Yes, sir, we do.

5 Q. And was there any reason that Mario physically could
6 not have written the statement?

7 A. He was asked if he would like to write his statement or
8 if he had any objections to Investigator Silvaggio typing
9 his statement on the computer, and that's what he preferred
10 to do.

11 Q. Why don't you try my question?

12 A. Yes, sir.

13 Q. Was there any physical reason that Mario could not have
14 written his own statement?

15 A. No, sir, there was not.

16 Q. Now, on June 25th, when you responded to the scene,
17 didn't you also speak with the neighbor at 162 Woodside
18 Road, Alma Forester?

19 A. There were several other persons on this --
20 investigators that responded. I did not personally speak
21 with them.

22 Q. Investigator Alexander, let me show you your report
23 dated July 1st, 2002. Tell me if that helps refresh your
24 memory.

25 A. I spoke with them and didn't take any statements from

1 them.

2 Q. But now you do remember now at least speaking with Ms.
3 Forester?

4 A. Yes, sir.

5 Q. And were you also involved with serving search warrants
6 on the white Honda Civic and the dark blue Chrysler
7 Imperial?

8 A. Yes, sir.

9 Q. And did you do that with Chris Bryan and Brad Henderson
10 from the ID department?

11 A. From the forensics division, yes, sir.

12 Q. And did Chris Bryan or Brad Henderson seize any
13 evidence on that day?

14 A. I was there for the service. They take care of
15 handling the key evidence that's processed or seized.

16 Q. And I understand. I'm just asking do you remember did
17 they seize any?

18 A. Not that I remember. I'm not sure.

19 Q. Let me show you a report dated July 3rd, 2002, and tell
20 me if it appears that some evidence was, in fact, seized by
21 Officer Bryan?

22 A. Apparently they did take the wheels and tires, yes,
23 sir.

24 MR. QUINN: I don't have any other questions.

25 Thank you.

1 it into evidence.

2 MR. WESTON: All right.

3 BY MR. WESTON:

4 Q. Investigator Silvaggio, before you publish this
5 statement, let me ask you one other question.

6 There is -- a couple other questions. There is a
7 notary seal and signature affixed to the bottom of the page.
8 Can you describe how that came about?

9 A. Yes. At the conclusion of the interview and once Mario
10 Hinojos, Jr. ^reviewed the statement, initialed the
11 beginning and end of each paragraph, made any corrections,
12 initialed those, and signed each portion of the statement
13 form, I then signed it, Detective Underwood then signed it,
14 Bobby Alexander -- Investigator Bobby Alexander signed it.
15 Subsequent to that interview went into June the 31st, after
16 the midnight hour. And I then requested that Detective Ron
17 Underwood get a notary public for the State of Georgia to
18 come into the room, affirm with Mario Hinojos, Jr.^ that
19 this is his statement, this is his initials, these are his
20 signatures, and at that point to have them notarize this
21 document, series of documents, and place the seal -- the
22 State of Georgia notary public seal on each of the
23 documents.

24 Q. All right, sir,

25 A. That was conducted.

1 there was blood spatter evidence available? I think you
2 said a panel was removed?

3 A. Yes, sir.

4 Q. And can blood spatter be determined by someone in
5 Greenville County, or do you have to use SLED?

6 A. Someone in Greenville County.

7 Q. And you took tire markings, is that correct?

8 A. Actually took two sections of the road, yes.

9 Q. And seized the tires off the vehicle at some point?

10 A. Yes, we did.

11 Q. Okay. I think Detective Alexander testified about
12 that.

13 Now, let's talk about these statements. Is it routine,
14 or policy, or protocol, whatever word you think is
15 appropriate, to take a statement from an eyewitness to a
16 case?

17 A. Yes, sir.

18 Q. Why wasn't a statement taken from Jason Carver?

19 A. Jason Carver was under medical care. And when an
20 individual is under medical care and subsequent to that on
21 medication, altering-type medication for pain, nerves, such
22 as that nature, it's improper and unethical for a law
23 enforcement officer to take a statement from an individual
24 under those conditions.

25 Q. Is he still on that medication?

1 shooting in South Carolina because they F'd me for stealing
2 my marijuana and I was not going to let them rip me off. I
3 was not going to come across as being weak and then they
4 take advantage of me, for I was going to show them that I
5 was not going to put up with that disrespect. Joel and I
6 were in this together. We both got the guns and we both
7 knew what we were going to do. We were going back to Yoda's
8 trailer and shoot them for what they did to me." His words.
9 Mario Hinojos, Jr.'s words.

10 At the outset of this trial I told you this case
11 would about pride and reputation and a skewed sense of
12 respect and disrespect in this community.

13 I'm not talking about what I heard. I'm not
14 talking about rumor. I'm talking about what he said. You
15 will have this back there with you to look at. We are
16 talking about a cold blooded killer. We are talking about a
17 man who puts his reputation, his respect in the community
18 and his pride way above the lives of three human beings.
19 \$900 worth of marijuana.

20 Let me begin by talking about the law with you.
21 I'm going to be very brief about it. His Honor is going to
22 tell you about the law, and one of the things that he's
23 going to tell you is that what I say and what Mr. Quinn says
24 are not evidence. And that's true. It's just our feeling
25 on what the law is.

1 We have the burden of proof, we being the State.
2 We have to prove to your satisfaction beyond a reasonable
3 doubt Mario Hinojos, Jr.^ took the life of Gloria Heslep
4 with malice aforethought.

5 We have to prove this defendant took the life of
6 Kenyatta Campbell with malice aforethought.

7 If we have proved that to your satisfaction beyond
8 a reasonable doubt, then it would your duty to find him
9 guilty of murder on each one of those counts.

10 We also have to prove this defendant committed an
11 aggravated assault and battery upon Jason Carver with the
12 intent to kill him.

13 How am I going to do all that? Let me explain it
14 right quick. He shot him in the head. My God. What does
15 it take? What's more an egregious? What's more emphasis on
16 intending to kill somebody than to shoot them in the head at
17 point blank range with a revolver? If that's not assault
18 and battery with intent to kill, ladies and gentlemen, I
19 don't know what is.

20 We have to establish that to you beyond a
21 reasonable doubt. I think we have established that.

22 With regard to malice, His Honor will tell you a
23 legal definition of malice. I believe he will tell you
24 something along the line of malice being evidenced by a
25 malignant heart, a heart devoid of human -- of the common

1 human decency.

2 Another thing I think he will tell you is that
3 malice can be inferred by the use of a deadly weapon. This
4 gun. If you take the gun -- if you take a gun and shoot
5 somebody with it, there is enough evidence for you as jurors
6 to find someone guilty of murder, because you infer malice
7 when you take this gun and use it as a gun.

8 And in this particular case we are not talking
9 about someone who was just playing with a gun and slipped
10 sliding and bam, somebody is dead.

11 We have to establish that to you beyond a
12 reasonable doubt. I'm go through the evidence to show you
13 why I think we have established that.

14 With regard to malice. Once again, His Honor will
15 tell you a legal definition of malice. I believe he will
16 tell you something along the line of malice being -- can be
17 evidenced by a malignant heart, a heart devoid of the common
18 human decency.

19 One thing I think he will tell you is that
20 malpractice can be inferred by the use of a deadly weapon.
21 This weapon. If you take a gun -- or what that means, if
22 you take a gun and shoot somebody with it, that is enough
23 evidence for you as jurors to find someone guilty of murder,
24 because you infer malice in the fact that someone uses a
25 gun.

1 In this particular case we're not talking about
2 someone who just playing with a gun and slip sliding and
3 bam, somebody is dead. We're talking about a man who tells
4 you. Kenyatta said something like call the police. Bang, I
5 shot him in head. Gloria Heslep then screamed. Bang, I
6 shot her in head. And as I was going out the door, Cheech
7 was sitting by the door. Bang, I shot him in the head.
8 Then we went to Georgia. And just like that, two lives are
9 gone, and a third has been altered intractably forever. If
10 that ain't malice, ladies and gentlemen, I don't know what
11 is.

12 You look through this statement. Look through
13 here and listen to those words. Read those words and just
14 imagine. Just think about those words, how cold-blooded is
15 is that this man sat there and talked to law enforcement for
16 four hours about what he did and how cold-blooded as he
17 described what happened. He didn't care about Kenyatta
18 Campbell. He didn't care about Gloria Heslep. He certainly
19 didn't care about Jason Carver. Probably that he didn't
20 die, but he didn't care about those people. All he cared
21 about was getting away to Georgia and getting on through to
22 Mexico, or somewhere. Hiding from the police.

23 He said he didn't shoot any police officers. When
24 they were chasing him he didn't shoot at them, because they
25 didn't do anything to me. Remember when he said when

1 Investigator Silvaggio read it? It kind of stuck to me. He
2 well, well, I didn't shoot at police officers when they were
3 chasing me because they didn't do anything to me. Well,
4 what did Gloria Heslep do to him, except scream when he shot
5 her friend. That's all she did to him. What was he mad at
6 her about?

7 There's a saying, sort of jokingly that I used to
8 here a lot of times when I was growing up. They would make
9 this joke about this crazy guy who was in jail and they
10 would say why did you kill everybody in the house? Eight
11 people. Why did you kill all eight people in the house?
12 And he would say they was home, and that was the reason.
13 They happened to be there, so I killed them. That has never
14 been brought home to me more clearly than right here today,
15 ladies and gentlemen.

16 Why did you kill Gloria Heslep? She was home.
17 Why did you shoot Jason Carver? He was there. Why did this
18 other guy, Terrance or Travis not get killed? He wasn't
19 home. His grandmother said he wasn't there. They went by
20 his house first. Remember? He walked up to the door,
21 according to his statement, showed the gun to his
22 grandmother and said I'm looking for him, he's in trouble.
23 Imagine if he had been home. Gloria Heslep was home.
24 Kenyatta Campbell was home. Jason Carver was there. And
25 just because they happened to be there, this man shoots

1 them. Ladies and gentlemen, that's murder. When you kill
2 somebody simply because they were home, that's murder.

3 Let's talk about the evidence for a moment. You
4 heard the testimony of Officer Roe and Officer Atwell and
5 Officer Bryan. Is there any question that what they were
6 telling you was true?

7 When Officer Roe arrived on the scene, he found
8 Jason Carver sitting on the porch with a towel up to his
9 head with an obvious blood wound. He sees two deceased
10 parties lying just inside the doorway, sort of over each
11 other. Kenyatta Campbell laying across the chair. Gloria
12 Heslep on the floor right next to him, right next to the
13 front door inside that residence. Obviously dead.

14 Officer Atwell arrives on the scene a few minutes
15 later and he sweeps the residence to make sure there was no
16 one in the house, there is no one else there. They were on
17 their way to Georgia at that point.

18 Officer Bryan comes. He investigates the scene.
19 He finds these four bullet casings throughout somewhere in
20 the house. Two in the living room and two in the back
21 bedroom. They don't find the fifth one. It doesn't mean he
22 didn't shoot five times. Just means he didn't find it.

23 And let me just point out right now. I'm not even
24 going to touch on this a lot. Nobody in this case, none of
25 the lay witnesses in this case said the exact same things.

1 him. Fifth graders know \$975 worth of marijuana ain't worth
2 killing somebody for. Sixth graders, third graders know
3 that. They have more decency of human beings than that to
4 suggest, and he put on paper to admit that for \$975 worth of
5 marijuana, I will kill somebody. I will not only kill
6 somebody, I will kill two people, and hopefully a third if
7 he dies. My god, ladies and gentlemen, that's murder.
8 That's senseless murder with malice aforethought. That's
9 what that is.

10 Robert Joel Smith testified that he got a deal.
11 The State -- well, Mr. Steinberg and I all y'all see is the
12 State. We are the solicitor's office. It is your
13 responsibility to prosecutor cases here in Greenville
14 County, as I told you at the outset. The State offered him
15 the opportunity to plead guilty to two counts of voluntary
16 manslaughter, one count of assault and battery with intent
17 to kill if he agreed to testify against the guy who shot
18 these people. Sometimes in order to get to the devil, you
19 got to go deep down in the mud to get down to where he is.
20 In order the get way down to where he is, we had to deal and
21 do some things that we otherwise might not have done, but
22 let me just give you a couple of distinctions. Do not be
23 bamboozled to believe into believing that this man is guilty
24 of voluntary manslaughter.

25 His Honor will give you a definition of what

1 voluntary manslaughter is. He will say something along the
2 line of voluntary manslaughter is the killing of another
3 human being without malice aforethought. And as I told you,
4 as simple as this, malice can simply be inferred by the use
5 of a deadly weapon. I mean, he's going to tell you that.
6 The fact that he used a gun and shot somebody is enough for
7 you to find him guilty of murder.

8 This, and things he told, and the things that you
9 are going to read that he said that you have heard him say
10 puts its way over the top of malice aforethought. But
11 that's enough.

12 But let me show you some distinctions between this
13 man and Robert Joel Smith. There's no question, based on
14 the evidence, it was this guy's marijuana. This was his
15 gig. Robert Smith was just with him. He went and got the
16 marijuana from his place. He brought it back. He was
17 selling the marijuana. He was out \$975, not Robert Joel
18 Smith. He said when the marijuana is gone, let's go back to
19 my house. He went back to his house. He got the guns from
20 his father's gun cabinet. Not Robert Joel Smith. He did
21 give Robert Joel Smith this .38, and there's no question
22 about that. They then went -- oh, excuse me. He is driving
23 the car. It's his car. This is his show. They then go to
24 Travis' grandmother's house. He drives to Travis'
25 grandmother's house. Robert Joel Smith once again is a

1 passenger. He's riding along. He's his boy. Every drug
2 dealer has to have a boy that just kind of hanging out with
3 him. A gopher, so to speak. He's the one, according to
4 what he says, who gets out of the car, knocks on the door,
5 talks to Travis' grandmother and shows her the gun and says
6 hey, where is Travis, because I'm looking for him, because
7 he stole his marijuana, he thought. Fortunately Travis
8 wasn't home, but Robert Joel Smith didn't do that. He did.
9 They then get back in the car and they drive back to the
10 trailer.

11 And this is the most important thing, ladies and
12 gentlemen. He shot Gloria Heslep in this head. Not Roger
13 Joel Smith. He shot Kenyatta Campbell in the head. Not
14 Robert Joel Smith. He shot Jason Carver in the head and
15 left him for dead. Not Robert Joel Smith.

16 And I'm not going to try to minimize Robert Joel
17 Smith. I'm not inviting him for dinner to my house. He has
18 a .38-caliber gun with him. And I'm not suggesting that he
19 is not responsible, but is he as responsible as this guy?
20 Oh, hell no.

21 And do not be bamboozled say -- well, yeah, the
22 handle of one is the hand of all, which is why both of them
23 were charged. But do not get suckered into the argument
24 that, well, that's all he got, that's all he should get.
25 Heaven help us if we think that a man who shoots two people

1 and leaves a third for dead and who says this to you -- or
2 says to the officers what he said is guilty of voluntary
3 manslaughter. He is guilty of murder, ladies and gentlemen,
4 and that that's all there is to that.

5 Ladies and gentlemen, I told you at the outset
6 this case is not about drugs. It is not. It is not about
7 people being in the wrong place at the wrong time. It is
8 not about well, these folks, these victims, it's tragic
9 they're victims, but they -- they hadn't been doing drugs
10 and hadn't have been there, they -- if they hadn't nothing.
11 Nobody deserves to die because they smoked a few joints or
12 bought so little bit of pot, and I'm not condoning that by
13 any means, but it goes back to what I said about talking to
14 the kids. Nobody deserves to die for any reason, unless
15 they are trying to kill somebody else. Nobody deserves to
16 be blamed at all for their deaths because somebody decides
17 that their lives are worth less than \$975 of marijuana.
18 That is not their fault. And shame on anybody who would
19 suggest that it is, that were even in the wrong place at the
20 wrong time. They were in their home. Gloria Heslep was in
21 her home. Kenyatta Campbell was staying at that home. That
22 was his home for the time being. Jason Carver was a
23 consensual guest in their home.

24 If this man gets mad because somebody does
25 something that he doesn't like and leaves, he has absolutely

no right to go arm himself, come back there and shoot the occupants in that home. If anybody was in the wrong place at the wrong time, he was. He was in the wrong place at the wrong time with the wrong thing.

And do not -- do not think that this is somehow their responsibility because they had some drugs in their system.

Ladies and gentlemen, I'm going to close. And I know I have a tendency to ramble, and I apologize for that, but let me just say if murder is the killing of another human being with malice aforethought, the only issue you have to decide, I would say think, is whether there was malice aforethought, because he told you in his statement, and you are going have the statement back there, I killed them. So you know that. And as to whether or not there was malice aforethought, as I said, His Honor, will tell you that you can infer malice simply because he had a gun.

That's enough, but that ain't nowhere near all you got.

Let me leave you with these words, ladies and gentlemen. His words. "Joel and I made up our minds and said to one another we were going back to the trailer to kill them all because of what they did about stealing my dope. The girl was going so call the cops because Yoda said for her to call the cops while she was holding him in the living room. I freaked out because she was going to call

1 the cops and I did not have enough time to get away." Thank
2 you.

3 THE COURT: Mr. Quinn.

4 MR. QUINN: The judge told you at the beginning of
5 the case, or earlier in this case, that the System of
6 Justice in South Carolina, the trial system, works well, but
7 y'all are going to have the opportunity to take part and see
8 how it works. And it works well and it stays on track as
9 long as the trial remains a search for truth. As long as it
10 remains that you twelve get to decide what the facts are,
11 because that is your role. The judge will tell you what the
12 law is. You twelve decide what the facts are.

13 When the courtroom becomes a contest, when it
14 becomes no longer a search for truth but an I-want-to-win
15 situation, then you get off skew. We get off track
16 sometimes.

17 Evidence, if nothing else, means that what is
18 presented to you is consistent, that it's reliable, that
19 it's something upon which you can place your trust, that you
20 can make a decision, without, as the solicitor describes it,
21 any doubt.

22 Investigator Silvaggio talks about how many police
23 officers there were involved from each different agency. I
24 asked him to go through his report. I think we determined
25 there were 15 Greenville County, and four from Cobb County,

1 Now, ladies and gentlemen, murder, I'll define
2 that for you.

3 Murder is the killing of one person by another
4 person, the unlawful killing of one person by another person
5 with malice aforethought, either expressed malice or implied
6 malice.

7 In order to convict of murder, the State must not
8 only prove that the deceased was killed by the defendant,
9 but it also must prove beyond a reasonable doubt that the
10 killing was done with malice aforethought.

11 Now, malice in the law of homicide is a term of
12 art; that is, a technical term. It imports wickedness and
13 excludes just cause or excuse. Murder is the malicious
14 taking of human life. It is something which springs from
15 depravity, from a heart devoid of social duty, and fatally
16 bent on wrongdoing.

17 * Malice has been defined as the wrongful intent to
18 injure another and indicates a wicked or depraved spirit
19 intent on doing wrong.

20 Now, the words expressed malice or implied malice
21 do not mean different kinds of malice, but merely the manner
22 in which the only kind of malice known to the law may be
23 shown to exists.

24 Now, of course, expressed malice is malice that
25 comes from the lips of the person, an expression of the

1 intent and the malice. Expressed by words that you intend
2 to -- intent on bent -- fatally bent on intent on doing
3 wrong and killing someone else.

4 Now, malice may be inferred considering all the
5 circumstances that surround the case.

6 Now, an inferred malice, as I said, they are not
7 different kinds of malice, but malice may be inferred from
8 the conduct showing a total disregard for human life.

9 Inferred malice can also rise when the deed is
10 done with a deadly weapon.

11 A deadly weapon is an article or instrument which
12 is likely to cause death or great bodily harm.

13 Whether an instrument has been used as a deadly
14 weapon, of course, depends on the facts and circumstances
15 from the case. You have to determine that.

16 Of course, a pistol under our law is defined as a
17 deadly weapon.

18 Now, if you find from the facts that a pistol was
19 used in the death of another person, then there may be an
20 inference of malice. That inference of malice is simply a
21 evidentiary fact to be taken into consideration by you, the
22 jury, along with all the other evidence in the case, and you
23 may give it such weight as you think it deserves.

24 You may accept or reject this permissive inference
25 of malice, depending upon your view of all the evidence

1 that's been introduced in the case. Now, that is the
2 definition of malice.

3 Now, malice must be a forethought. It must exist
4 in the mind of the individual for some length of time before
5 the incident in question. It doesn't have to exist for any
6 particular length of time before the commission of the act,
7 but the malice must be a forethought. That meant there must
8 be a combination of the previous evil intent and the act
9 which produces the fatal result.

10 And then, of course, the act accompanied with
11 malice aforethought must be a direct or proximate cause of
12 the death of the individual.

13 Now, ladies and gentlemen, if you find that the
14 State has proven each and every element of the crime of
15 murder beyond a reasonable doubt, then your verdict would be
16 guilty of murder.

17 If you should find that the State has failed to
18 prove any element of the crime of murder beyond a reasonable
19 doubt, then you may consider a lesser included offense of
20 manslaughter.

21 A defendant indicted for murder may be convicted
22 of manslaughter, if the evidence warrants it.

23 Manslaughter is defined under our Code of Laws as
24 the unlawful killing of one person by another without
25 malice.

1 The absence of malice is what distinguishes
2 manslaughter from murder.

3 Voluntary manslaughter is the felonious taking of
4 the life of another in the sudden heat of passion upon
5 sufficient legal adequate provocation.

6 If the killing is committed during the heat of
7 passion aroused by legally adequate provocation, then it is
8 considered to be without malice and is manslaughter.

9 If, on the other hand, the killing does not occur
10 during the heat of passion, or the provocation is
11 inadequate, then the killing is with malice and is murder.

12 In order for an intentional and unlawful killing
13 to be without malice, and, therefore, manslaughter instead
14 of murder, the killing must occur during the heat of passion
15 aroused by adequate promise of provocation and before the
16 passion has cooled or has had time to cool.

17 The sudden heat of passion upon sufficient legal
18 provocation which mitigates a felonious killing to
19 manslaughter, while it need not be such as to dethrone
20 reason entirely or to shut out knowledge and volition, it
21 must be such as would naturally disturb the sway of reason
22 and render the mind of an ordinary person capable of cool
23 reflection and produce, according to human experience -- and
24 produce what, according to human experience, may be an
25 uncontrollable impulse to do violence.

1 Now, if you should find, as I said, they haven't
2 proved all the elements of murder, you may consider the
3 elements of the manslaughter, as I have explained it to you.

4 And if you find that the murders, or if there was
5 a killing, that it was done without malice, then you could
6 find the defendant guilty of manslaughter, as I have defined
7 that to you, if all those elements are met.

8 Now, if the State has failed to prove any elements
9 of either murder or manslaughter, your verdict would be not
10 guilty.

11 Now, ladies and gentlemen, in regard to assault
12 and battery with intent to kill, then you would need to
13 determine if an assault was committed upon Mr. Carver and if
14 a battery was committed upon Mr. Carver, and if that assault
15 and battery was done with malice aforethought, which I have
16 already defined that to you, and that there was an intent to
17 kill Mr. Carver.

18 If all of those elements have been proven to you
19 beyond a reasonable doubt, your verdict would be guilty of
20 assault and battery with intent to kill Mr. Carver.

21 If any of these elements have not been proven to
22 you beyond a reasonable doubt, then your verdict would be
23 not guilty of assault and battery with intent to kill Mr.
24 Carver.

25 Now, ladies and gentlemen, whatever verdict you

1 reach, and you can only reach one of three of the verdicts
2 that I have given you on each of the indictments, whichever
3 the verdict that you reach of the three must be unanimous.
4 All twelve of you have to agree on the verdict.

5 When you reach a unanimous verdict, then you
6 notify the bailiff and we will bring you out and take the
7 verdict. I'm going to send all the evidence back to the
8 jury room with you.

9 All of you -- each person on the jury has an equal
10 vote and equal input into the case, but someone has to
11 preside. And, ma'am, that would be your responsibility. I
12 picked your name out. I don't think that I know personally
13 any of you, I may, but some of us change and get a little
14 older, if we known each other in our younger days and may
15 not recognize that, but I just picked your name out, so you
16 have to preside back there. Okay.

17 When you reach a unanimous verdict, let us know.

18 I'm going to ask y'all to step back to the jury
19 room.

20 Of course, this is an important case to the State.
21 It's an important case to Mr. Hinojos. Let me go over the
22 law that I have explained to you. Now, I could have made a
23 misstatement and not intended to and I may have to bring you
24 back out and cover something else. But if not, I would send
25 word back and then you can begin your deliberations. Thank

1 the suffering Mario Hinojos, Jr.^ has caused, not only to
2 our lives, but also to the other two families with the power
3 vested in you have no mercy for Mario Hinojos, Jr., and give
4 him the maximum allowed by South Carolina law. I ask you of
5 this not only for my son, but the Kenyatta and Gloria that
6 are no longer here.

7 THE COURT: Anything else?

8 MR. STEINBERG: No, sir, Your Honor.

9 We appreciate law enforcements assistance and hard
10 work on this case.

11 THE COURT: Mr. Quinn?

12 MR. QUINN: Your Honor, as you heard, Mario was 18
13 when this incident occurred. He's been in jail since he was
14 arrested. He has no prior criminal record.

15 I would ask, Your Honor, you obviously heard the
16 facts. There is no need for me to belabor or go through any
17 of the facts with the court.

18 I would say ask the court to be as merciful,
19 although I understand the families, of course, don't think
20 mercy is appropriate, but I would ask you to be as merciful
21 as you could.

22 I don't know if Your Honor will sentence Joel
23 Smith. He obviously was involved in this in some fashion.

24 Mario has expressed consistently his
25 responsibility for this action, has never denied it. We

1 have attempted for an extensive length of time to work out a
2 plea to try to come before the court and have not been able
3 to. I would ask Your Honor just to at least know that he
4 has not every denied these actions. He didn't take the
5 stand to any attempt to mislead anybody. In fact, he told
6 me he could not do that. He has consistently expressed
7 remorse to his family about this, He has not had the
8 opportunity, of course, to express remorse to anyone else.
9 That would have been a violation of his bond.

10 I would ask Your Honor to be as merciful as you
11 could.

12 THE COURT: Okay. Anything that you want to say
13 before I sentence you, Mr. Hinojos?

14 THE DEFENDANT: I would like to ask for, you know,
15 for forgiveness from the families, but it seems like they
16 don't really care to forgive nobody right at the time, but I
17 just pray that the Lord Jesus will give them the strength to
18 forgive me for what I've done.

19 I don't have nothing else to say, Your Honor.

20 MR. QUINN: Your Honor, if I might also. His
21 family is present the courtroom. A number of members of his
22 family have been present throughout the trial. Obviously
23 they care for him and stand by him. They don't have any
24 interest to address the court.

25 THE COURT: Okay. This is one of the most

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2307208

Mario Hinojos vs. South Carolina State Of

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 FEB 21 P 12:24

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

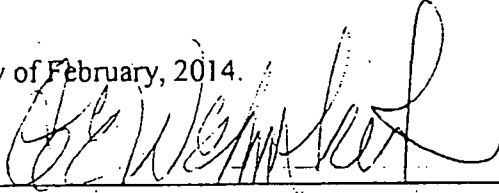
IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Before the Court is Petitioner's Motion to Vacate Disposition and Reopen Proceedings, regarding newly discovered evidence. Having considered the pleadings, the relevant court rules, and the erudite arguments of counsel, Petitioner's Motion is DISMISSED; provided however if proper exhibits substantiating the motion are submitted before March 31st, 2014, the matter may be set for a hearing.

Dated at Greenville, South Carolina, this 21st day of February, 2014.

Court Reporter: Danette Hanks



PRESIDING JUDGE - G. Edward Welmaker

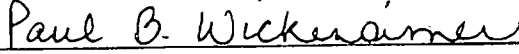
This judgment was entered on the 21st day of February, 2014, and a copy mailed first class this 21st day of February, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

~~Mario Hinojos 301870 Lee Correctional Institution~~
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ATTORNEY(S) FOR THE DEFENDANT(S)



Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Mario Hinojos,)

v.)

State of South Carolina,)

Respondent)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-23-7208

**MOTION TO VACATE DISPOSITION
AND REOPEN PROCEEDINGS**

FILED-CLERK OF COURT
PAUL E. HINOJOS
2013 DEC 13 AM 10:12

COMES NOW the applicant, **Mario Ramos Hinojos, Jr.**, by and through his undersigned counsel, and, pursuant to Rule 59(b) of the South Carolina Rules of Civil Procedure, respectfully moves this Honorable Court to Reconsider the December 9, 2013, Order dismissing the applicant's application for post-conviction relief.

The following is submitted in support of Mr. Hinojos' Motion:

1. On February 7, 2013, Mr. Hinojos filed an amended application for post-conviction relief;
2. On May 7, 2013, the Honorable D. Garrison Hill issued a conditional order of dismissal denying and dismissing Mr. Hinojos' action. Mr. Hinojos was further given twenty (20) days to submit a response to the conditional order of dismissal;
3. On June 27, 2013, Brian P. Johnson, esq., was appointed to represent Mr. Hinojos in the above referenced application for post-conviction relief;
4. Counsel did not submit a response to the conditional order of dismissal;
5. From conversations with Mr. Hinojos, counsel has learned that there may be new grounds for relief that Mr. Hinojos could not have raised in this, or previous applications for relief.

6. Counsel is informed and believes that there is in existence a file from the Federal Bureau of Investigation that Mr. Hinojos was unaware of until recently; therefore, Mr. Hinojos could not have previously raised the file's existence as a ground for post-conviction relief in this, or prior applications;

7. S.C. Code section 17-27-90 and prevailing case law, primarily *Land v. State*, 274 S.C. 243, precludes subsequent applications for post-conviction relief unless the "court finds a ground for relief asserted which for sufficient reason was not asserted" in the "original, supplemental or amended application.";

8. Counsel is informed and believes that, Mr. Hinojos' discovery of the file from the Federal Bureau of Investigation, is a new ground for relief that was not asserted for sufficient reason in this, or previous applications;

WHEREFORE, for the foregoing reasons, Mr. Hinojos prays that this Court:

- (1) Order that the final order dismissing Mr. Hinojos' application for post-conviction relief be opened to take additional testimony on the issue,
- (2) Order that a Hearing be held on this matter, or;
- (3) Order whatever the Court deems just and proper.

Respectfully submitted,

By: 
Brian P. Johnson, Esq.
Attorney for Applicant

Date: December 12, 2013